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COVER NOTE

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

date of receipt: 19 December 2018

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

No. Cion doc.: C(2018) 9094 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 19.12.2018
amending Delegated Regulation (EU) 2015/2446 as regards the time-limits
for lodging entry summary declarations and pre-departure declarations in
case of transport by sea from and to the United Kingdom of Great Britain
and Northern Ireland, the Channel Islands and the Isle of Man

Delegations will find attached document C(2018) 9094 final.

Encl.: C(2018) 9094 final



Brussels, 19.12.2018
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COMMISSION DELEGATED REGULATION (EU) .../...

of 19.12.2018

amending Delegated Regulation (EU) 2015/2446 as regards the time-limits for lodging entry summary declarations and pre-departure declarations in case of transport by sea from and to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, if the Withdrawal Agreement¹ is not ratified, the Unions' primary and secondary law will cease to apply to the United Kingdom from 30 March 2019 ('the withdrawal date'). The United Kingdom will then become a third country.

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC), in consistency with the Treaty on the Functioning of the European Union (TFEU), delegates to the Commission the power to supplement certain non-essential elements of the UCC, in accordance with Article 290 TFEU. The Commission has therefore 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 Union Customs Code. This Commission Delegated Regulation established provisions of general application to supplement the Code in accordance with the Commission's delegated powers and with a view to ensuring a clear and proper application of the UCC.

In case the Withdrawal Agreement is not ratified, as of the withdrawal date, goods arriving in the customs territory of the Union from the United Kingdom will be subject to the obligation to lodge an entry summary declaration and goods leaving the customs territory of the Union for a destination in the United Kingdom will be subject to the obligation to lodge a pre-departure declaration. Those declarations are to be lodged within a time-limit that provides for sufficient time for Member States' customs administrations to carry out proper risk analysis for security and safety purposes prior to the arrival of the goods and prior to the departure of the goods, respectively, without causing major disruption in the logistical flows and processes of economic operators.

Currently, in accordance with Commission Delegated Regulation (EU) 2015/2446, specific time-limits are laid down for the lodging of entry summary declarations or pre-departure declarations for cargo movements between the customs territory of the Union and any port on the North Sea. Once the United Kingdom has become a third country, the same time-limits should apply for those purposes for goods transported by sea arriving from or leaving for ports of the United Kingdom which are not located on the North Sea. Therefore, this delegated act extends the application of the time-limits laid down for the North Sea ports to all ports of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man.

The Commission Communication on 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan'² has set out the contingency measures it plans to take for the case that no withdrawal agreement will enter into force on the withdrawal date. In that Communication, the Commission listed the actions it considered necessary while recalling that additional actions may be necessary at a later stage.

The European Council (Article 50) reiterated its call, on 13 December 2018, for work on preparedness at all levels for the consequences of the United Kingdom's withdrawal to be

¹ https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf.

² COM(2018) 880 final, 13.11.2018.

intensified, taking into account all possible outcomes. This act is part of a package of measures which the Commission is adopting in response to this call.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission has consulted the Member States in writing.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for this Regulation is contained in the delegation of power of Articles 131(b) and 265(a) of the Code.

Subsidiarity principle

The proposal falls under the exclusive competence of the EU according to Article 3(1)(e) of the Treaty on the Functioning of the European Union (TFEU).

Proportionality principle

In terms of proportionality, this Regulation respects the limits of the empowerments granted by the co-legislators and concerns only elements to better adapt the existing legal provisions to the requirements of the day-to-day practice of customs authorities and economic operators.

4. BUDGETARY IMPLICATIONS

Since this regulation is only intended to adapt the current legal rules of Delegated Regulation (EU) 2015/2446 to their intended objectives in view of the United Kingdom leaving the European Union and becoming a third country, and since no substantial changes are foreseen, no direct budgetary implications arise from this Regulation.

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

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amending Delegated Regulation (EU) 2015/2446 as regards the time-limits for lodging entry summary declarations and pre-departure declarations in case of transport by sea from and to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man

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 Code³, and in particular Articles 131(b) and 265(a) thereof,

Whereas:

- (1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, i.e. from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (2) Once the United Kingdom has become a third country and in the absence of a withdrawal agreement, goods arriving in the customs territory of the Union from the United Kingdom will be subject to the obligation to lodge an entry summary declaration and goods leaving the customs territory of the Union for a destination in the United Kingdom will be subject to the obligation to lodge a pre-departure declaration. Those declarations are to be lodged within a time-limit that provides for sufficient time for Member States' customs administrations to carry out proper risk analysis for security and safety purposes prior to the arrival of the goods and prior to the departure of the goods, respectively, without causing major disruption in the logistical flows and processes of economic operators.
- (3) Currently, in accordance with Commission Delegated Regulation (EU) 2015/2446⁴, specific time-limits are laid down for the lodging of entry summary declarations or pre-departure declarations for cargo movements between the customs territory of the Union and any port on the North Sea. Once the United Kingdom has become a third country, the same time-limits should apply for those purposes for goods transported by sea arriving from or leaving for ports of the United Kingdom which are not located on the North Sea. Therefore, the time-limits laid down for the North Sea ports should apply to all ports of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man.

³ OJ L 269, 10.10.2013, p. 1.

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 as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

- (4) This Regulation should enter into force as a matter of urgency and apply as from the day following that on which the Treaties cease to apply to and in the United Kingdom unless a withdrawal agreement concluded with the United Kingdom has entered into force by that date,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) in Article 105(c), the following point is added:
- ‘(vi) all ports of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man;’;
- (2) in Article 244(1)(a), point (ii) is replaced by the following:
- ‘(ii) for containerised cargo movements between the customs territory of the Union and Greenland, the Faeroe Islands, Iceland or ports on the Baltic Sea, the North Sea, the Black Sea or the Mediterranean, all ports of Morocco and all ports of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man, at the latest two hours before departure from a port in the customs territory of the Union;’.

Article 2

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 the day following that on which the Treaties cease to apply to and in the United Kingdom pursuant to Article 50(3) of the Treaty on European Union.

However, this Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) of the Treaty on European Union has entered into force by that date.

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

Done at Brussels, 19.12.2018

For the Commission
The President
Jean-Claude JUNCKER