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**COVER NOTE**

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 14 December 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 14.12.2023 amending Delegated Regulation (EU) 2015/2446 as regards the proof of the customs status of Union goods and the customs formalities relating to electronic cargo sensor devices

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Delegations will find attached document C(2023) 8596 final.

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Encl.: C(2023) 8596 final



EUROPEAN  
COMMISSION

Brussels, 14.12.2023  
C(2023) 8596 final

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

**of 14.12.2023**

**amending Delegated Regulation (EU) 2015/2446 as regards the proof of the customs status of Union goods and the customs formalities relating to electronic cargo sensor devices**

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## **EXPLANATORY MEMORANDUM**

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

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC)<sup>1</sup> delegates to the Commission the power to supplement certain non-essential elements of the UCC, in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU)<sup>2</sup>. The Commission 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 UCC<sup>3</sup>.

Delegated Regulation (EU) No 2015/2446 ('the Regulation') establishes provisions of general application to supplement the UCC to ensure its clear and proper application. The Regulation is regularly updated to take account of developments in legislation, of the deployment of the UCC's IT systems and to clarify the application of certain customs formalities.

Some of the amendments covered in this Delegated Regulation are motivated by the need to adapt the current rules to the upcoming deployment of the IT system "Proof of Union Status", which serves to prove that the goods are Union goods and therefore in free circulation in the customs union. More specifically, those amendments are intended to:

- clarify the specific cases in which Union goods may move, without being subject to a customs procedure, from one point to another within the customs territory of the Union and temporarily out of that territory without alteration of their customs status, in accordance with Article 155(2) UCC;
- reinforce the concept of authorised issuers, which can certify that goods have the customs status of Union goods.

Other amendments are needed to simplify the customs formalities applicable to electronic cargo sensor devices (eCSDs). The new rules would apply when eCSDs are taken to the customs territory of the Union (usually with the purpose of protecting the cargo from theft by including them in the packings or attaching them to the packings so that the devices go wherever the packings go), provided that they are intended to be re-exported once the goods have been unpacked at their destination. It is intended to treat these sensors as packings for customs purposes, meaning that they can be declared for temporary admission, through oral declaration.

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

The Commission carried out a consultation in line with the Common Understanding on Delegated Acts between the European Parliament, the Council and the European Commission.

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

<sup>2</sup> OJ C 326, 26.10.2012, p. 47.

<sup>3</sup> OJ L 343, 29.12.2015, p. 1.

The Commission consulted Member States on the draft text in regular meetings of its Expert Groups (Customs Expert Group (CEG)). Business consultation was also carried out via the Trade Contact Group (“TCG”).

- For the articles concerning the proof of Union status, Member State experts were consulted at the CEG – TRANSIT Section (TRA) meetings on 27 January, 1 April and 7 July 2022 and trade was consulted in the context of a plenary session with the TCG on 23 October 2020 and three ad-hoc TCG meetings on the subject on 9 February 2021, 23 February 2021 and on 19 October 2021.
- For the articles on the applicable customs formalities for the security and tracking devices, Member State experts were consulted at the CEG – Special Procedures Section (SPE) meeting on 1 February 2023.
- In order to ensure the coherence of the amendments with the existing provisions of the Regulation and with the overall UCC framework, the Customs Expert Group - General Customs Legislation Section was consulted at its 55<sup>th</sup> meeting held jointly with the TCG on 11 May 2023.

The Commission has carefully considered all the comments it received during the consultation and taken them into account as much as possible in the Delegated Act.

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

The legal basis for this Regulation is contained in the delegation of power provided for in Article 156(a), (b) and (d) and Articles 160 and 253(b) of the UCC.

#### **Subsidiarity principle**

The Delegated Regulation 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 aspects aimed at better adapting existing legal provisions to the requirements of the day-to-day practices of customs authorities, economic operators and persons other than economic operators.

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

of 14.12.2023

### amending Delegated Regulation (EU) 2015/2446 as regards the proof of the customs status of Union goods and the customs formalities relating to electronic cargo sensor devices

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>4</sup>, and in particular Article 156, points (a), (b) and (d), Article 160 and Article 253, point (b), thereof,

Whereas:

- (1) The implementation of Regulation (EU) No 952/2013, in combination with Commission Delegated Regulation (EU) 2015/2446<sup>5</sup>, has shown that some amendments to that Delegated Regulation are needed in order to better address the needs of economic operators and customs authorities as regards the proof of the customs status of Union goods and the customs formalities applicable during the transhipment of goods.
- (2) In order to clarify the specific cases in which Union goods may move, without being subject to a customs procedure, from one point to another within the customs territory of the Union and temporarily out of that territory without alteration of their customs status, it is necessary to confirm that the presumption of Union status implies that, although the goods may temporarily leave the customs territory of the Union through international waters or airspace, a stop outside of the customs territory of the Union is not authorised.
- (3) The concept of an authorised issuer authorisation aims at simplifying the formalities related to the proof of customs status of Union goods exclusively. In view of the deployment of the electronic system related to the Proof of Union Status (PoUS) as referred to in the Annex to Commission Implementing Decision (EU) 2019/2151<sup>6</sup>, the conditions for such authorisations need to be reinforced.

<sup>4</sup> OJ L 269, 10.10.2013, p. 1.

<sup>5</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>6</sup> Commission Implementing Decision (EU) 2019/2151 of 13 December 2019 establishing the work programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code (OJ L 325, 16.12.2019, p. 168).

(4) In order to simplify the customs formalities applicable to electronic cargo sensor devices (eCSDs), where security and tracking devices that can be placed inside packings, or those attached to packings, are declared for temporary admission or re-exported, those devices should benefit from simplified customs formalities. It is also important to ensure that those eCSDs benefit from total relief from import duty when declared for temporary admission. Such total relief should also apply to packings that are imported filled, are intended for re-export, whether empty or filled, and bear permanent, indelible markings identifying a person established within or outside the customs territory of the Union, since those packings also benefit from the same simplified customs formalities when declared for temporary admission or re-export.

(5) Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

(1) Article 119 is amended as follows:

(a) the heading is replaced by the following:

**‘Presumption and proof of customs status**

(Articles 153(1) and 155(2) of the Code);

(b) in paragraph 2, point (a), is replaced by the following:

‘(a) where the goods are carried by air and have been loaded or transhipped at a Union airport for consignment to another Union airport, without a stop outside the customs territory of the Union, provided that they are carried under cover of a single transport document issued in a Member State;’;

(c) paragraph 3 is replaced by the following:

‘3. Union goods may move, without being subject to a customs procedure, from one point to another within the customs territory of the Union and temporarily out of that territory without alteration of their customs status in the following cases, provided that their customs status of Union goods is proven:

(a) goods which have been brought from one point to another within the customs territory of the Union and temporarily leave that territory by sea or air without a stop outside that territory;

(b) goods which have been brought from one point to another within the customs territory of the Union through a territory outside the customs territory of the Union without being transhipped, and are carried under cover of a single transport document issued in a Member State;

(c) goods which have been brought from one point to another within the customs territory of the Union through a territory outside the customs territory of the

Union and which were transhipped outside the customs territory of the Union on a means of transport other than that onto which they were initially loaded and are carried under cover of a single transport document issued in a Member State. If a new transport document is being issued outside the customs territory of the Union, the original single transport document shall be made available to customs on re-entry of the Union;

- (d) motorised road vehicles registered in a Member State which have temporarily left and re-entered the customs territory of the Union;
- (e) packaging, pallets and other similar equipment, excluding containers, belonging to a person established in the customs territory of the Union which are used for the transport of goods that have temporarily left and re-entered the customs territory of the Union;
- (f) goods in baggage carried by a passenger which are not intended for commercial use and have temporarily left and re-entered the customs territory of the Union.;

(2) Article 128 is amended as follows:

- (a) paragraph 3 is replaced by the following:

‘3. The application for the authorisations referred to in paragraphs 1 and 2 shall be submitted to the customs authority competent to take the decision in the Member State where the goods are first loaded onto a means of transport for consignment and where all the necessary information on the goods is available.’;

- (b) the following paragraphs 3a and 3b are inserted:

‘3a. The authorisation referred to in paragraph 1 shall only be granted provided that:

- (a) the applicant is established in the customs territory of the Union;
- (b) the applicant regularly issues the proof of the customs status of Union goods or the competent customs authorities know that the applicant is able to meet the requirements laid down in the Code and in this Regulation for the use of those proofs;
- (c) the applicant fulfils the criteria laid down in Article 39, points (a), (b) and (d), of the Code;
- (d) the competent customs authority considers that it will be able, without a disproportionate administrative effort, to supervise the proofs of Union status issued by the applicant and to carry out controls.

3b. The authorisation referred to in paragraph 1 shall specify, in particular:

- (a) the conditions under which records shall be made available to customs for the purposes of control and retained for at least three years;

- (b) the manner in which the authorised issuer shall establish that the proofs have been properly used;
  - (c) the period within which and the manner in which the authorised issuer shall notify the competent customs office in order to enable it to carry out any necessary controls before the departure of the goods. ’;
- (3) in Article 136(1), the following point (ja) is inserted after point (j):
- ‘(ja) security and tracking devices for cargo placed inside the packings or attached to the packings;’
- (4) in Article 138, point (c) is replaced by the following:
- ‘(c) goods referred to in Article 136(1), points (a), (j) and (ja), of this Regulation which benefit from relief from import duty as returned goods in accordance with Article 203 of the Code;’;
- (5) in Article 139, paragraphs 1 and 2 are replaced by the following:
- ‘1. Where not declared using other means, the goods referred to in Article 136(1), points (a) to (d) and points (h) to (ja), 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 Article 136(1), points (a) to (d), and points (h) to (ja), shall be deemed to be declared for re-export in accordance with Article 141 discharging the temporary admission procedure. ’;
- (6) in Article 141(1), points(d)(iv) and (v) are replaced by the following:
- ‘(iv) where goods as referred to in Article 136(1), points (a), (j) and (ja), of this Regulation are deemed to be declared for temporary admission in accordance with Article 139(1) of this Regulation;
- ‘(v) where goods as referred to in Article 136(1), points (a), (j) and (ja), of this Regulation complying with the conditions established in Article 203 of the Code are brought to the customs territory of the Union in accordance with Article 138, point (c), of this Regulation.’
- (7) Article 228 is replaced by the following:

*‘Article 228*

**Packings and security and tracking devices**

(Article 250(2)(d) of the Code)

Total relief from import duty shall be granted for the following goods:

- (a) packings imported filled and intended for re-export, whether empty or filled;
- (b) packings imported empty and intended for re-export, whether empty or filled;

- (c) security and tracking devices for cargo placed inside the packings or attached to the packings and intended for re-export.

The applicant and the holder of the procedure may be established in the customs territory of the Union.'

*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, 14.12.2023

*For the Commission  
The President  
Ursula VON DER LEYEN*