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

of 14.3.2019

**amending Delegated Regulation (EU) 2015/2446 as regards the declaration of certain
low-value consignments**

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), 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 establishes 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.

Delegated Regulation (EU) 2015/2446 provides that goods with an intrinsic value not exceeding EUR 22 may be declared for release for free circulation if they are simply presented to customs; in such cases it is not necessary to lodge a standard customs declaration. One of the reasons for this simplified rule is that most goods not exceeding EUR 22 are exempt from VAT at import pursuant to Article 23 of Council Directive 2009/132/EC¹ (as regards customs duties, none are due on most goods imported in consignments of a value below EUR 150 or on gifts from individuals to individuals). The Delegated Regulation provides that this simplified rule applies in each Member State only until the date on which that Member State upgrades its National Import IT system. However, on 5 December 2017, the Council adopted new VAT rules for e-commerce² that will, inter alia, abolish the VAT exemption for imported goods of a value not exceeding the EUR 22 threshold, with effect from 1 January 2021. The result is that, in the Member States that will upgrade their National Import IT systems before 2021, the possibility of declaring goods below EUR 22 by their simple presentation to customs would be removed and a standard customs declaration would be required even if there was no obligation to collect VAT or customs duties on them.

It is therefore necessary to ensure that the obligation to lodge a standard customs declaration for goods under EUR 22 will apply only as from 1 January 2021 (date when the obligation to pay VAT on imports of these goods will become applicable) and that, before that date, the possibility of declaring those goods by their simple presentation to customs will remain available irrespective of whether National Import systems have been upgraded.

Annex B to Delegated Regulation (EU) 2015/2446 defines the data requirements for customs declarations. The increase in e-commerce transactions and the introduction of the new VAT rules for e-commerce have revealed that the standard data requirements are not appropriate for the declaration of goods imported in consignments of an intrinsic value not exceeding EUR 150 or of gifts from individuals to individuals (low-value consignments) for the following reasons:

¹ Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods (OJ L 292, 10.11.2009, p. 5).

² Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348 of 29.12.2017, p.7).

- (1) Part of the data requirements listed in Annex B are not necessary in the context of low-value consignments because, pursuant to Articles 23 and 25 of Council Regulation (EC) No 1186/2009, most such goods are exempt from customs duties.
- (2) The customs declaration will, therefore, mostly be needed for VAT purposes. Pursuant to the new rules for e-commerce, where the VAT has been levied under the so-called Import One Stop Shop (IOSS or Special Scheme for distance sales of good imported from third countries or third territories in Section 4 of Chapter 6 of Title XII of Directive 2006/112/EC), the import customs declaration must indicate the value of the total goods imported and the individual VAT identification number of the supplier. Where the VAT has not been levied under the IOSS, the customs declaration must contain enough information to allow the collection of VAT at import.
- (3) The high volume of low-value consignments makes it necessary, for practical reasons, to assimilate as much as possible the dataset required for customs purposes with the electronic information already sent by an operator at the place of dispatch of the goods (i.e. in a third country).

It is therefore necessary to amend Delegated Regulation 2015/2446 to introduce the possibility to declare low-value consignments for customs purposes using a different dataset i.e. one that contains fewer elements than a standard customs declaration. That possibility should be available from 1 January 2021 because the Member States must apply the new VAT rules for e-commerce from that date.

However, the possibility to use the reduced dataset to declare low-value consignments should not be available for goods subject to prohibitions or restrictions. These should continue to be declared using a standard customs declaration with all the relevant information.

Nor should the reduced dataset be used to declare goods that are exempt from VAT on importation under customs procedure codes 42 and 63 (i.e., pursuant to Article 143(1)(d) of Council Directive 2006/112/EC³). The reason is that the reduced dataset is conceived for the cases in which VAT has already been levied under the IOSS, for which there is no need to collect VAT at importation, and for the cases in which the Member State of importation will levy the VAT at import. By contrast, the goods imported under customs procedures 42 and 63 are imported into a Member State other than the Member State that will levy VAT and, in such cases, the reduced dataset would not contain enough information to comply with all the VAT-related requirements applicable in these cases.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission carried out a consultation in line with paragraph 4 of the Common Understanding on Delegated Acts between the European Parliament, the Council and the European Commission.

The Commission developed this Delegated Act in accordance with the Framework Agreement on relations between the European Parliament and the European Commission and with the Common Understanding of the European Parliament, Council and Commission on delegated acts. Member States and all other relevant stakeholders have been duly involved and constantly consulted on the draft provisions.

³ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

The Commission carried out consultations on the draft text with Member States through meetings of the group of experts (Customs Expert Group), as well as consultations of the business community through the consultative stakeholder body (Trade Contact Group – TCG) in joint meetings with Member States experts.

The Commission has actively considered all comments received during this consultation exercise, and, to the greatest extent possible, included them in the version provided herewith.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for this Regulation is contained in the delegation of power of Article 160 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 and persons other than economic operators.

4. BUDGETARY IMPLICATIONS

Since this regulation is only intended to better adapt the current legal rules of Delegated Regulation (EU) 2015/2446 to their intended objectives, no direct budgetary implications arise from this Regulation.

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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 Code⁴, and in particular Articles 7(a) and 160 thereof,

Whereas:

- (1) Pursuant to Regulation (EU) No 952/2013 ('Code'), customs declarations may, in specific cases, be lodged using means other than electronic-data processing techniques.
- (2) Commission Delegated Regulation (EU) 2015/2446⁵ provides that goods with an intrinsic value not exceeding EUR 22 may temporarily be declared by simply presenting them to customs instead than by lodging a customs declaration. One of the reasons for this is that most goods with a value not exceeding EUR 22 may be granted an exemption from VAT by the Member States pursuant to Article 23 of Council Directive 2009/132/EC⁶. Those goods may also benefit from a relief from customs duty pursuant to Council Regulation (EC) No 1186/2009⁷.
- (3) Currently, the possibility to declare goods with a value not exceeding EUR 22 by presenting them to customs is limited to the period before Member States upgrade their National Import Systems referred to in the Annex to Commission Implementing Decision (EU) 2016/578⁸. In addition, Council Directive (EU) 2017/2455⁹ abolishes the VAT exemption for goods with a value not exceeding EUR 22 with effect from 1 January 2021. As a result, in the Member States that upgrade their National Import Systems before 1 January 2021, the possibility of declaring those goods by presenting them to customs would be removed and a customs declaration would be required even if there is no obligation to collect VAT on those goods and a relief from customs duty

⁴ OJ L 269, 10.10.2013, p. 1.

⁵ 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).

⁶ Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods (OJ L 292, 10.11.2009, p. 5).

⁷ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L 324, 10.12.2009, p. 23).

⁸ 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).

⁹ Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

applies. Delegated Regulation (EU) 2015/2446 should therefore be amended to ensure that the possibility to declare goods with an intrinsic value not exceeding EUR 22 by presenting them to customs is available until the EUR 22 threshold is abolished for VAT purposes.

- (4) Annex B to Delegated Regulation (EU) 2015/2446 defines the data requirements for customs declarations. The increase in e-commerce transactions has revealed that those data requirements are not adequate for declaring goods imported in consignments of an intrinsic value not exceeding EUR 150 or consignments not of a commercial nature sent by a private individual to another private individual (low-value consignments). First, part of the data required in Annex B is not necessary in that context because, pursuant to Articles 23 and 25 of Regulation (EC) No 1186/2009, most goods imported in low-value consignments are exempt from customs duties. Second, the customs declaration of those goods will be mostly needed to comply with the rules for VAT on goods imported in consignments with an intrinsic value not exceeding EUR 150 introduced by Directive (EU) 2017/2455, namely, for the VAT rules related to the special scheme for distance sales of goods imported from third countries or third territories set out in Section 4 of Chapter 6 of Title XII of Council Directive 2006/112/EC¹⁰ or for levying VAT under the special arrangements for declaration and payment of import VAT in Chapter 7 of Title XII of the same Directive. Third, the high volume of low-value consignments makes it necessary to adapt to the maximum possible extent the dataset required for customs purposes to the electronic information sent by the operator at the place of dispatch of the goods (i.e. in a third country).
- (5) It is therefore necessary to amend Delegated Regulation (EU) 2015/2446 to introduce the possibility to declare low-value consignments for customs purposes using a different dataset, one that contains less elements than a standard customs declaration dataset. That possibility should be available from the date of application of the measures for levying VAT on goods imported in consignments with an intrinsic value not exceeding EUR 150 set out in Directive (EU) 2017/2455.
- (6) However, the possibility to declare low-value consignments using the reduced dataset should not be available for goods subject to prohibitions or restrictions. Those goods should continue to be declared using a standard customs declaration with all the relevant information. The reduced dataset should not be used either to declare goods that are exempt from VAT on importation pursuant to Article 143(1)(d) of Directive 2006/112/EC (customs procedure codes 42 and 63). The reduced dataset is conceived for the cases in which VAT has already been declared in accordance with the special scheme for distance sales of goods imported from third countries or third territories in accordance with Section 4 of Chapter 6 of Title XII of Directive 2006/112/EC and so there is no need to collect VAT at importation; the reduced dataset is also conceived for the cases in which the Member State of importation is also the Member State of consumption for VAT purposes and therefore the Member State levying VAT. By contrast, goods imported under customs procedure codes 42 and 63 are imported in a Member State different from the Member State that will levy VAT and the reduced dataset does not contain enough information to comply with all the VAT-related requirements applicable in those cases.
- (7) Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly,

¹⁰ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 141(5) is replaced by the following:

“5. Until the date preceding the date set out in the fourth subparagraph of Article 4(1) of Council Directive (EU) 2017/2455, goods the intrinsic value of which does not exceed EUR 22 shall be deemed to be declared for release for free circulation by their presentation to customs pursuant to Article 139 of the Code, provided that the data required are accepted by the customs authorities.

* Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).”;

(2) the following Article 143a is inserted:

“Article 143a

Customs declaration for consignments of low value

(Article 6(2) of the Code)

- (1) From the date set out in the fourth subparagraph of Article 4(1) of Directive (EU) 2017/2455, a person may lodge a customs declaration for release for free circulation containing the specific dataset referred to in Annex B in respect of a consignment which benefits from a relief from import duty in accordance with Article 23(1) or Article 25(1) of Regulation (EC) No 1186/2009, under the condition that the goods in that consignment are not subject to prohibitions and restrictions.
- (2) By way of derogation from paragraph 1, the specific dataset for consignments of low value shall not be used for the following:
 - (a) release for free circulation of goods the importation of which is exempt from VAT in accordance with point (d) of Article 143(1) of Directive 2006/112/EC and, where applicable, moved under an excise duty suspension in accordance with Article 17 of Directive 2008/118/EC;
 - (b) re-import with release for free circulation of goods the importation of which is exempt from VAT in accordance with point (d) of Article 143(1) of Directive 2006/112/EC and, where applicable, moved under an excise duty suspension in accordance with Article 17 of Directive 2008/118/EC.”;
- (3) Annex B is amended as set out in the Annex to this Regulation.

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, 14.3.2019

For the Commission
The President
Jean-Claude JUNCKER