Commission Implementing Regulation (EU) 2020/893 of 29 June 2020 amending Implementing Regulation (EU) 2015/2447 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

COMMISSION IMPLEMENTING REGULATION (EU) 2020/893

of 29 June 2020

amending Implementing Regulation (EU) 2015/2447 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

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[(1)], and in particular Articles 8, 17, 50, 76, 132, 138, 143, 157, 161, 176, 193, 217, 232 and 268 thereof,

Whereas:

(1) The practical implementation of Regulation (EU) No 952/2013 (the Code) in combination with Commission Implementing Regulation (EU) 2015/2447[(2)] has shown that some amendments need to be made to that Implementing Regulation in order to better adjust it to the needs of economic operators and customs administrations as well as to take into account legislative developments and developments regarding the deployment of the electronic systems established for the purposes of the Code.

(2) The Court of Justice of the European Union, in its judgement in case C-661/15[(3)], declared invalid Article 145(3) of Commission Regulation (EEC) No 2454/93[(4)], establishing a one-year limitation period to take into account adjustments in the price of defective goods for determining their customs value. According to the Court, on the basis of the Customs Code which was applicable at the time[(5)], the debtor could obtain repayment of import duties, proportionate to the reduction in the customs value resulting from the application of Article 145(2) of Regulation (EEC) No 2454/93, until expiry of a time-limit of three years from the communication of those duties to the debtor. However, Article 145(3) of Regulation (EEC) No 2454/93 reduced that possibility to a time-limit of 12 months since the adjustment to the customs value resulting from the application of Article 145(2) of that Regulation could be taken into account only if the adjustment was made within that 12-month time-limit. Article 145(3) of Regulation (EEC) No 2454/93 ran counter to Article 29 of the Customs Code, read in conjunction with Article 78 and Article 236(2) of that Code. It was therefore invalid. Regulations (EEC) No 2913/92 and (EEC) No 2454/93 are no longer in force, but point (c) of Article 132 of Implementing Regulation (EU) 2015/2447 also establishes a one-year limitation for adjusting the customs value of defective goods. It should therefore be deleted so that it is clear that the general time-limit of three years laid down in point (a) of Article

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121(1) of the Code for claiming repayment or remission of overcharged duties also applies in relation to defective goods. For the sake of legal certainty, in order to clarify that the one-year limitation period should have never applied in these cases, point (c) of Article 132 of Implementing Regulation (EU) 2015/2447 should be deleted with retroactive effect from the entry into force of that Regulation.

(3) Article 182 of Implementing Regulation (EU) 2015/2447 requires the use of an electronic information and communication system set up pursuant to Article 16(1) of the Code for the submission, processing, storage and exchange of information relating to entry summary declarations, and for the subsequent exchanges of relevant information. By Implementing Decision (EU) 2019/2151[(6)], the Commission has decided to set up a new electronic system (ICS2) to support customs pre-arrival security and safety risk analysis and related controls, namely, the processing of the entry summary declaration particulars for customs risk analysis and control and the exchanges of information connected to it. Article 182 of Implementing Regulation (EU) 2015/2447 should therefore be amended to specify the purposes for which the ICS2 system is to be used, and also, in order to ensure harmonisation in the customs territory of the Union, to require economic operators to use a harmonised trader interface, designed by the Commission and the Member States, to submit the particulars of entry summary declarations to the customs authorities, and for the exchange of related information.

(4) Article 183 of Implementing Regulation (EU) 2015/2447 sets out rules for lodging the particulars of the entry summary declaration, including the obligation of having them lodged by different persons in specific cases in accordance with Article 127(6) of the Code (multiple filing). The deployment of ICS2 in three releases (release 1, release 2 and release 3) will gradually allow multiple filing of particulars of the entry summary declaration to relevant transport sectors and business models. Article 183 of Implementing Regulation (EU) 2015/2447 should therefore be amended to clarify the rules applicable until ICS2 is fully in place. The point of departure is the situation under the existing Import Control System. Through that system, carriers in all transport modes (air, sea, inland waters, road and rail), including express carriers, must submit all the particulars of the entry summary declaration at once for goods for which there is no applicable waiver in Article 104 of Commission Delegated Regulation (EU) 2015/2446[(7)]. From the deployment of release 1 of the new electronic system, in the air transport mode, express carriers will in addition be required to lodge the minimum dataset for all consignments, regardless of their value, and postal operators will be required for the first time to lodge the minimum dataset, but only for goods in postal consignments having the Union as final destination. Pursuant to Article 106 of Delegated Regulation (EU) 2015/2446, until release 2 of the new system is deployed, that minimum dataset will be considered as the full entry summary declaration for goods in postal consignments and for goods in consignments not exceeding EUR 22. From the first day of the deployment window for release 2 of ICS2, multiple filing will be possible in air transport. Air carriers are to stop using the existing Import Control System and to progressively connect to the new ICS2, through which they must submit the relevant dataset with the particulars of the entry summary declaration. From the first day of the deployment for release 3 of the new system, multiple filing will be possible in the

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other transport modes. Carriers in those transport modes are to gradually connect to the new system. The Member States will determine the date as of which the economic operators are obliged to use the different releases of the new system in accordance with paragraph 6 of Part I of the Annex to Implementing Decision (EU) 2019/2151, within the deployment windows set out therein. Article 183 should also be amended to clarify the rules applicable to determine the customs office of first entry where the person filing the particulars of the entry summary declaration does not know the place of first arrival in the Union of the means of transport carrying the goods.

(5) The obligations of information about the particulars of the entry summary declaration by persons other than the carrier should apply as the three releases of the new system are deployed. Accordingly, the general reference to the deployment of the Import Control System in Article 184 of Implementing Regulation (EU) 2015/2447 should be replaced by more specific references to the three releases of ICS2. The obligation to inform on goods transported by sea should apply from the moment the carrier is obliged to use release 3 of the new system. The obligation to inform on goods transported by air or by post should apply from the moment the carrier is obliged to use release 2 of the new system.

(6) The obligation of the customs authorities to register the submission of particulars of the entry summary declaration and inform on that registration should also reflect the different releases of ICS2. Accordingly, the general reference to the deployment of the Import Control System in Article 185 of Implementing Regulation (EU) 2015/2447 should be replaced by more specific references to the three releases of the new system. The customs authorities should register and notify the registration of particulars of the entry summary declaration from the first day of the deployment window of release 1 of ICS2. After the deployment of release 2 of that new system, multiple filing will be available in certain situations and therefore Article 185 should also state that, from that date onwards, the customs authorities should be required to immediately notify the carrier about the registration of the particulars of the entry summary declaration by other economic operators, if the carrier has requested to be notified.

(7) Article 186 of Implementing Regulation (EU) 2015/2447 should clarify the time limits for the risk analysis on the basis of the particulars of the entry summary declaration and the necessary measures to be taken in the context of risk analysis. Article 186 of Implementing Regulation (EU) 2015/2447 should provide that, as a general principle, the customs office of first entry, after having received the entry summary declaration on time, must complete the risk analysis before the goods arrive in the customs territory of the Union. However, this time limit should be shorter for goods brought by air. The customs office of first entry should be required to complete the risk analysis on those goods as soon as possible after having received the minimum dataset of the entry summary declaration. In addition, for the purpose of ensuring uniform application of customs controls, Article 186 should also be amended to define the steps that the customs office of first entry is to follow to complete the risk analysis on the basis of the particulars of the entry summary declaration. In particular, on the basis of Articles 46, 47 and 128 of the Code, the customs office of first entry is to exchange information with the Member States indicated in those particulars and with the Member States that

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have recorded in ICS2 information relating to security and safety risks matching the particulars of the entry summary declaration, requiring those other customs authorities to carry out a risk analysis and to make certain results of that risk analysis available.

(8) Article 186 of Implementing Regulation (EU) 2015/2447 should also be amended to entitle the customs office of first entry to recommend, following the completion of risk analysis, the most appropriate place and measures to perform controls on the goods. The customs office competent for the place that has been recommended as the most appropriate for the control should have the possibility to choose whether it will follow the recommendation, but should be in any event required to inform the customs office of entry whether or not there has been a control and, in the affirmative, of the results of that control. In addition, it is appropriate to establish a procedural rule pursuant to which the customs authorities are to use ICS2 to inform of the risk assessments and control results in the cases provided in Article 46(5) of the Code or for any other exchange of control results pursuant to Article 47(2) of the Code. Furthermore, the obligation to carry out risk analysis upon the presentation of the goods should be extended to cover more cases in which the obligation to lodge an entry summary declaration is waived in accordance with Delegated Regulation (EU) 2015/2446.

(9) The title in Article 187 of Implementing Regulation (EU) 2015/2447 should be amended to reflect that the rules therein are transitional because they only apply until ICS2 is deployed. Until the new system is available, the customs authorities should be required to carry out their risk analysis based on the information in the existing Import Control System. Article 187 of Implementing Regulation (EU) 2015/2447 should state that the existing Import Control System is to be used until the various dates of deployment of the new system. The references to the Delegated Regulation (EU) 2015/2446 in paragraph 5 of Article 187 of Implementing Regulation (EU) 2015/2447 also should be updated. The rules on the impossibility to release the goods before the risk analysis has been carried out and on how to carry the risk analysis after amendment of the entry summary declaration should also apply during the transitional period and should therefore be added to Article 187 of Implementing Regulation (EU) 2015/2447.

(10) The procedural rules to amend or invalidate the entry summary declaration set out in Article 188 of Implementing Regulation (EU) 2015/2447 should distinguish between the new ICS2 and the existing Import Control System. The new system should be used for filing requests to amend or to invalidate an entry summary declaration. However, Member States should have the possibility to allow submitting requests in paper format for amending or invalidating declarations that were lodged using the existing Import Control System.

(11) Article 189 of Implementing Regulation (EU) 2015/2447 should be amended to distinguish the rules for diversion of aircrafts and vessels applicable under the existing Import Control System and the ones to be applied under the new electronic system ICS2.

(12) Following the introduction of the EU Form 302 in Article 1(51) of Delegated Regulation (EU) 2015/2446, Article 207 of Implementing Regulation (EU) 2015/2447 should be amended in order to allow the use of EU form 302 as a proof of the customs status of Union goods.

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(13) Following the amendment to Article 141 of Delegated Regulation (EU) 2015/2446 on acts deemed to be a customs declaration, Article 218 of Implementing Regulation (EU) 2015/2447 should be amended accordingly to clarify in which cases certain customs formalities at entry or exit are also deemed to have been carried out by the act deemed to be a customs declaration.

(14) Following the introduction, in Article 141(3) of Delegated Regulation (EU) 2015/2446, of a transitional rule for declaring postal consignments by their presentation to customs until the deployment of release 1 of ICS2 to support customs pre-arrival security and safety risk analysis and related controls, Article 220 of Implementing Regulation (EU) 2015/2447 should clarify that the specific rules on acceptance and release of the postal consignments are also transitional.

(15) Procedural rules should be created for the use of both NATO form 302 and EU form 302 for customs procedures other than transit. New Articles 220a and 220b should therefore be inserted in Implementing Regulation (EU) 2015/2447. In order to ensure the smooth functioning of the procedural rules, Article 221 of that Regulation should require the Member States customs authorities to designate the customs office or offices responsible for customs formalities and controls concerning goods to be moved or used under cover of either NATO form 302 or EU form 302.

(16) Article 221 of Implementing Regulation (EU) 2015/2447 should also be amended to clarify that the customs office situated in the Member State where the dispatch or the transport of the goods ends is to be the customs office competent for declaring for import certain duty-free goods, if those goods are declared for VAT purposes under a scheme other than the special scheme for distance sales of goods imported from third territories or third countries, so-called Import One Stop Shop, set out in Title XII Chapter 6 Section 4 of Council Directive 2006/112/EC[(8)]. The objective is to ensure that the VAT rate of the Member State of destination or of consumption of the goods is charged on these goods.

(17) Article 271 of Implementing Regulation (EU) 2015/2447 should be amended to enhance the harmonised use of the electronic system for the standardised exchange of information (INF). To establish a uniform procedure for the economic operators to introduce the data elements required into this system, a harmonised trader interface should be used by the concerned economic operators.

(18) Following the introduction of Member States' obligation to designate a customs office responsible for all customs formalities and controls concerning goods to be moved or used under cover of either NATO form 302 or EU form 302 in Article 221 of Implementing Regulation (EU) 2015/2447, Article 285 of that Regulation, providing for the same obligation but for transit only, becomes redundant and should be deleted. In addition, the provisions concerning the supply of NATO forms 302, as well as the procedural rules applying to the use of such forms, should be extended to transit movements under cover of EU form 302. Articles 285, 286 and 287 of Regulation (EU) 2015/2447 should therefore be amended, and new provisions should be inserted.

(19) Article 321 of Implementing Regulation (EU) 2015/2447 should be amended to clarify the end of the Union transit procedure for goods entering the customs territory of the