Commission Delegated Regulation (EU) 2020/877 of 3 April 2020 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013, and amending Delegated Regulation (EU) 2016/341 supplementing Regulation (EU) No 952/2013, laying down the Union Customs Code

COMMISSION DELEGATED REGULATION (EU) 2020/877

of 3 April 2020

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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 Code[(1)], and in particular Articles 7, 10, 24, 88, 131, 156, 160, 168, 175, 183, 212, 216, 253 and 265 thereof,

Whereas:

(1) The practical implementation of Regulation (EU) No 952/2013 (the Code) in combination with Commission Delegated Regulation (EU) 2015/2446[(2)] has shown that some amendments need to be made to that Delegated 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 IT systems established for the purposes of the Code.

(2) In order to clarify which customs office must ensure that the pre-arrival risk analysis is carried out on the basis of the entry summary information, the definition of ‘customs office of first entry’ in Article 1(15) of Delegated Regulation (EU) 2015/2446 should be amended to spell out that, where that term is used, it refers to the office responsible for the place at which the means of transport is destined to arrive even if, for any reason, the means of transport actually arrives at a different place for which a different office is responsible.

(3) In order to clearly delimit the scope of application of the rules on the entry summary declaration covering goods in express consignments and of the formalities applicable to the import and to the export of such goods, the terms ‘express consignment’ and ‘express carrier’ should be defined.

(4) In order to ensure a uniform application of the customs provisions based on the intrinsic value of the goods, a definition of the term ‘intrinsic value’ is needed.

(5) In line with the Action Plan on Military Mobility[(3)], there is a need to streamline and simplify the customs formalities for goods moved or used in the context of military activities. That objective should be met by establishing a definition of such goods, and by establishing an EU form 302 as a customs document to be used by the EU Member

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States, including in the context of military activities pertaining to the Common Security and Defence Policy of the Union.

(6) In order to allow that, pursuant to Union legislation other than customs legislation, the economic operator registration and identification number (EORI) is used for identification, persons other than economic operators should be obliged to register in EORI where such registration is required by Union legislation and not only where it is required by the legislation of a Member State. Article 6 of Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly.

(7) Article 13(4) of Delegated Regulation (EU) 2015/2446 provides for a possibility to extend the time limit to take a decision relating to the application of the customs legislation where the competent customs authorities are investigating an infringement of customs legislation. That possibility should also apply for cases in which the competent customs and fiscal authorities are investigating an infringement of tax legislation, as some authorisations can only be granted in the absence of serious or repeated infringements of taxation rules. Article 17(1) of Delegated Regulation (EU) 2015/2446 sets out an obligation for the customs authorities to suspend a decision until it is established whether an economic operator has committed a serious infringement or repeated infringements. That obligation should also cover cases of serious criminal offences relating to the applicant's economic activity but should not extend to infringements or criminal offences committed by persons in charge of the company's customs matters who are not employees of that company, in line with Article 24(1) of Commission Implementing Regulation (EU) 2015/2447[(4)]. Articles 13(4) and 17(1) of Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly.

(8) Article 86(3) of the Code sets out specials rules for calculating the amount of a customs debt where the debt is incurred for processed products resulting from the inward processing procedure. At the request of the declarant, that customs debt is determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure at the time of acceptance of the customs declaration relating to those goods. Article 76 of Delegated Regulation (EU) 2015/2446 lays down the conditions under which Article 86(3) of the Code is to apply without a request from the declarant. In order to avoid the circumvention of anti-dumping and countervailing duties, safeguard measures and additional duties resulting from a suspension of concessions that would be applicable to goods when first placed under the inward processing procedure, the obligation to apply Article 86(3) of the Code without a request from the declarant should also cover processed products obtained from such goods placed under inward processing. Article 76 of Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly. A transitional period of 1 year should be granted in order to allow economic operators time to adapt to the new rules.

(9) Article 104(1) of Delegated Regulation (EU) 2015/2446 sets out exceptions from the requirement to lodge an entry summary declaration for goods brought into the customs territory of the Union. In order not to delay the import of organs and other human or animal tissue or human blood suitable for permanent grafting, implantation

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or transfusion in case of emergency, the exceptions should also cover those goods. In addition, in order to facilitate military mobility, those exceptions should be extended to goods moved under cover of a NATO form 302 or an EU form 302. Furthermore, following the inclusion of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union[(5)], the exception should no longer apply to goods brought from those territories. Article 104(1) of Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly.

(10) Directive (EU) 2019/883 of the European Parliament and of the Council[(6)] aims to protect the marine environment against the negative effect from discharges of waste from ships using ports located in the Union, by improving the availability and use of adequate port reception facilities and the delivery of waste to those facilities. In order not to jeopardise the objective of that Directive, the customs formalities for such waste should be streamlined and simplified by waiving the obligation to lodge an entry summary declaration and by considering the presentation to customs as a customs declaration for release for free circulation. Those simplifications should apply only if the advance waste notification referred to in Article 6 of Directive (EU) 2019/883 has been made to the competent authorities. Articles 104, 138, 141, and 142 of Delegated Regulation (EU) 2015/2446 should be amended accordingly.

(11) Article 104 of Delegated Regulation (EU) 2015/2446 sets out a waiver of the obligation to lodge an entry summary declaration for goods in postal consignments and for goods of a value not exceeding EUR 22, until the date of the upgrading of the Import Control System. However, the Commission has, by Commission Implementing Decision (EU) 2019/2151 (the Work Programme)[(7)], decided to set up a new electronic system (ICS2) to support customs pre-arrival security and safety risk analysis and related controls. The implementation of the new system is to be carried out through three releases (release 1, release 2 and release 3). The general reference to the upgrading of the Import Control System in Article 104 of Delegated Regulation (EU) 2015/2446 should therefore be replaced by more specific references to the different releases of the new system, to which the carriers will gradually connect. In accordance with the Work Programme, as regards air transport, postal operators and express carriers will connect to the new system from release 1 but they will only be obliged to lodge the minimum dataset of the entry summary declaration for goods in postal consignments having the Union as final destination and for goods in express consignments. Other economic operators or operations within the field of air transport will be covered by the new system from release 2. For rail, road, sea and inland waterways transport, the relevant economic operators must connect from release 3. Accordingly, the waiver for goods in postal consignments should not apply for air consignments having a Member State as final destination after release 1. In addition, it should not apply for air consignments having a third country as final destination after release 2, and for postal consignments that are transported by sea, inland waterways, road or rail after release 3. Similarly, the waiver for goods not exceeding EUR 22 in express consignments transported by air should not apply after release 1. In addition, it should not apply after release 2 for such goods in air consignments that are neither post nor express consignments. For goods in consignments transported by sea, inland waterways, road or rail it should not apply after

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release 3. The Member States are to determine, in cooperation with the Commission, the specific dates at which the economic operators are obliged to use the different releases of the new system in accordance with the Annex to the Work Programme. Article 104 of Delegated Regulation (EU) 2015/2446 should be amended accordingly.

(12) Article 106 of Delegated Regulation (EU) 2015/2446 sets out time limits to lodge the entry summary declaration in case of transport by air. Those time limits should also reflect the decision to set up the electronic system (ICS2) in three releases. The provision should clearly distinguish the general rule on the time limit to submit the entry summary declaration from the time limits to submit the minimum dataset of the entry summary declaration and the time limits to provide other particulars. This is so because, as stated in Article 183 of Implementing Regulation (EU) 2015/2447, from release 2 of the new system, the provision of the particulars of the entry summary declaration by different persons (multiple filing) will be gradually possible. From release 1 of the new system, postal operators and express carriers should be required to submit the minimum dataset of the entry summary declaration as soon as possible and at the latest before the goods are loaded into the aircraft that will bring them into the customs territory of the Union. The obligation to submit the minimum dataset should apply to all air carriers and economic operators involved in air transport activities from release 2. From release 2 of the new system, air carriers should be required to supplement the minimum dataset with the rest of the particulars so that the full entry summary declaration is lodged by the general time limits. However, between the dates of release 1 and release 2, the minimum dataset lodged by the postal operators and express carriers should be considered as the full entry summary declaration for goods in postal consignments and for goods in express consignments with an intrinsic value not exceeding EUR 22. The reason is that in that interval air carriers will not be connected to the new system and therefore they will not be able to supplement the minimum dataset. The rule establishing an obligation on air carriers and economic operators to submit the minimum dataset of entry summary declaration as early as possible, and at the latest before the goods are loaded onto the aircraft on which they are to be brought into the customs territory of the Union, ensures that customs authorities are in position to carry out risk analysis and undertake the necessary measures in the context of air cargo security. This is represents an important complementary action to the existing EU regulatory framework for aviation security, namely, Regulation (EC) No 300/2008 of the European Parliament and of the Council[8].

(13) Articles 112 and 113 of Delegated Regulation (EU) 2015/2446 set out obligations for other persons than the carrier to provide particulars of the entry summary declaration as regards, respectively, transport by sea or inland waterways and transport by air. Both articles contain transitional rules suspending the obligations until the upgrade of the Import Control System, Those transitional rules should reflect the fact that the provision of the particulars of the entry summary declaration by different persons will only occur from release 2 of the new system in the case of transport by air, and from release 3 in the case of transport by sea or inland waterways. Accordingly, the obligation of persons other than the carrier to provide the particulars of the entry summary declaration should distinguish between both releases. Moreover, the rule establishing that each person is responsible for the particulars of the entry summary declaration that he or

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she has submitted should be deleted from Articles 112 and 113 and become a new general provision applicable to any transport mode, and not to air and sea or inland waterways alone. To the extent that the entry summary declaration waiver for postal consignments and goods below EUR 22 will progressively disappear, that provision should also include a new obligation on postal operators and express carriers to provide the particulars of the entry summary declaration to the customs office of first entry, if they have not provided those particulars to the carriers having the obligation to supplement the minimum dataset provided by the postal operators or express carriers. Articles 112 and 113 of Delegated Regulation (EU) 2015/2446 should be amended accordingly, and a new Article 113a should be inserted.

(14) In order to facilitate military mobility, the EU form 302 should also serve as proof of the customs status of Union goods. Article 127 of Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly.

(15) Article 128d of Delegated Regulation (EU) 2015/2446 sets out the conditions for granting the authorization to draw up the shipping company's manifest after departure. Those conditions should continue to apply as long as that authorization can be granted, regardless of whether or not the UCC Customs Decision System has been deployed. The reference to the UCC Customs Decision System should, therefore, be deleted. Article 128d of Delegated Regulation EU) 2015/2446 should be amended accordingly.

(16) Article 141 of Delegated Regulation (EU) 2015/2446 lists certain acts that are to be deemed customs declarations for goods referred to in Articles 138(a) to (d), 139 and 140(1) of that Regulation. The formalities to declare, both for import and for export, organs and other human or animal tissue or human blood suitable for permanent grafting, implantation or transfusion in case of emergency should be as limited as possible in order not to delay their release through cumbersome customs formalities at the border and to ensure their timely usage. Such organs, tissue or blood should therefore be allowed to be declared by any of the acts listed in Article 141 of Delegated Regulation (EU) 2015/2446. Articles 138, 140 and 141 of that Delegated Regulation should therefore be amended accordingly.

(17) In order to further simplify the movement of goods moved or used in the context of military activities, the presentation to customs of a NATO form 302 or of an EU form 302 should be considered as a customs declaration for release for free circulation with import duty relief as returned goods, for temporary admission, for export or re-export, or for transit. In the absence of an electronic system for the submission of a NATO form 302 or of an EU form 302 to customs, it is also appropriate to allow for the submission of those forms by means other than electronic data-processing techniques. Articles 138 to 142 of Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly.

(18) Once the new value added tax (VAT) rules for distance sales laid down in Council Directive (EU) 2017/2455[9] enter into force, VAT will be due on all goods imported into the Union, regardless of their value. In order to ensure that VAT is collected for these goods, an electronic customs declaration will be required. The current possibility to declare postal consignments by any act listed in Article 141 of Delegated Regulation (EU) 2015/2446, needs, therefore, to be modified. That possibility should only apply