Commission Implementing Regulation (EU) 2019/1394 of 10 September 2019 amending and correcting Implementing Regulation (EU) 2015/2447 as regards certain rules on surveillance for release for free circulation and exit from the customs territory of the Union

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1394

of 10 September 2019

amending and correcting Implementing Regulation (EU) 2015/2447 as regards certain rules on surveillance for release for free circulation and exit from the customs territory of the Union

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, 58, 100, 132, 157, 161, 184, 193, 217, 232, 268 thereof,

Whereas:

(1) Council Regulation (EU) No 904/2010[(2)] requires Member States to collect and exchange certain information on importations that are exempt from value added tax (VAT) pursuant to Article 143(1)(ca) (special scheme for distance sales) or Article 143(1)(d) and 143(2) of Council Directive 2006/112/EC[(3)]. In addition, pursuant to Article 47(2) of the Code, customs and other competent authorities may, where necessary for the purposes of minimising risk and combating fraud, exchange with each other and with the Commission data received in the context of the entry, exit, transit, movement, storage and end-use of goods.

(2) The electronic system that the Commission has put in place to comply with the surveillance obligation in Article 56(5) of the Code, Surveillance, is the most appropriate tool to be used for exchanging that VAT-related information. It is necessary to amend Article 55 of Implementing Regulation (EU) 2015/2447 to clarify who and to what extent may have access to the data stored in the Surveillance system. First, the Commission should be able to disclose the data in Surveillance in an aggregated form. Second, as a general rule, authorised users in the Member States' customs authorities should have access only to the non-aggregated data that that Member State has provided and to data aggregated at Union level. Third, by derogation from the general rule, Article 55 should foresee the possibility that specific Union acts, such as Regulation (EU) No 904/2010, provides that the Commission grants to certain authorities of Member States access to non-aggregated data in a specific manner.

(3) In order to be able to collect the information that Regulation (EU) No 904/2010 requires Member States to collect and exchange, Implementing Regulation (EU) 2015/2447 should also be amended to increase the number of data elements that the electronic system collects. In particular, it is necessary that Annexes 21-01 and 21-02 to that

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Regulation include the data elements that, in Annex B to that Regulation, have the order number 3/40 and 4/4, which concern the additional fiscal references identification numbers and the tax base respectively.

(4) Following the amendment to Article 278 of the Code to prolong the deadline for the transitional use of means other than the electronic data-processing techniques provided for in the Code[(4)], the provision in Implementing Regulation (EU) 2015/2447 establishing a transitional list of data for the purpose of surveillance (Annex 21-02) should be amended. The provision should clarify that the transitional list of data can be used for the purposes of surveillance at release for free circulation until the national import systems are operational, that is, pursuant to Article 278(2) of the Code, until end of 2022 at the latest. By contrast, the transitional list can be used for the purposes of surveillance at export until the national export systems are operational, that is, pursuant to Article 278(3) of the Code, until end of 2025 at the latest.

(5) Until the upgrade of the Import Control System referred to in the Annex to Commission Implementing Decision (EU) 2016/578[(5)], the risk analysis of goods for which the obligation to lodge an entry summary declaration is waived must be made at the moment when those goods are presented to customs on the basis of the temporary storage declaration or the customs declaration or, where the customs declaration is made by any other act, the information available at the moment of the presentation. Article 187 of Implementing Regulation (EU) 2015/2447 should be amended so that it applies also to postal consignments and to consignments of an intrinsic value below EUR 22, by including the pertinent references to Commission Delegated Regulation (EU) 2015/2446[(6)].

(6) Economic operators should be given flexibility to provide, by forms or documents other than on a printout of a fishing logbook, the certification that sea-fishing products and goods transhipped and transported through a country or territory, which is not part of the customs territory of the Union, have not been manipulated. Nevertheless, in order to enable the allocation of the sea-fishing products and goods to the respective fishing logbook in cases where the certification of non-manipulation is provided by means of a form or document other than the printout of the fishing logbook, economic operators should include in that other form or document a reference to the respective fishing logbook. Article 214 of Implementing Regulation (EU) 2015/2447 should be amended accordingly.

(7) In the context of the simplification whereby a customs declaration is lodged in the form of an entry into the declarant's records, the customs authorities may waive the obligation to present the goods. In order to allow for a proper customs control in specific situations, procedural rules should be laid down for cases where, due to a new serious financial risk or other specific situation, the supervising customs office requests that specific goods be presented to customs pursuant to the third subparagraph of Article 182(3) of the Code. Article 234 of Implementing Regulation (EU) 2015/2447 should be amended accordingly.

(8) Article 302 of Implementing Regulation (EU) 2015/2447 provides for a waiver from sealing of the means of transport or the individual packages containing the goods for

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goods transported by air or by rail, provided certain conditions are fulfilled. Maritime transport is as secure as transport by air or by rail when it comes to ensuring that goods are delivered to the place of destination. Therefore, that waiver should be extended to goods transported by sea provided that a reference to the accompanying bill of lading is included in the electronic transport document used as customs declaration to place goods under the Union transit procedure.

(9) Where the customs authority of a Member State involved in a transit operation obtains evidence that the events giving rise to the customs debt occurred in its territory, that authority should request the Member State of departure to transfer to it the responsibility to start the recovery. The Member State of departure should confirm within a certain period whether it transfers the competency to start the recovery to the requesting customs authority. Article 311 of Implementing Regulation (EU) 2015/2447 should therefore be amended to cover the specific case of a transit operation.

(10) Article 324 of Implementing Regulation (EU) 2015/2447, concerning special cases of discharge of the inward processing procedure, and the corresponding codes in Annexes A and B should be amended to reflect the entry into force of Council Regulation (EU) 2018/581[(7)].

(11) When goods are taken out of the customs territory of the Union, the determination of the customs office of exit for goods loaded onto a vessel or onto an aircraft should be clarified. In addition, certain simplified arrangements for the determination of the customs office of exit should not apply to excise goods and non-Union goods. Article 329 of Implementing Regulation (EU) 2015/2447 should be amended accordingly.

(12) Where, after having been released for export, goods are taken over under a single contract for transport of these goods out of the customs territory of the Union, the rules for ensuring customs supervision until the physical exit of these goods should be clarified. Article 332 of Implementing Regulation (EU) 2015/2447 should be amended accordingly.

(13) The procedural rules laid down in Article 333 of Implementing Regulation (EU) 2015/2447 regarding the supervision of goods released for exit should be clarified to address situations whereby goods leave the customs territory of the Union in a different manner than initially foreseen, as well as to cover the exchange of information between customs authorities during the period until the deployment of the UCC Automated Export System referred to in the Annex to Implementing Decision (EU) 2016/578.

(14) The procedural rules laid down in Articles 340 of Implementing Regulation (EU) 2015/2447 regarding the exit of goods should be clarified to address situations whereby goods are declared for export but eventually do not leave the customs territory of the Union.

(15) Following the notification by North Macedonia to the United Nations and to the European Union of the entry into force of the Prespa Agreement as of 15 February 2019, the country previously denominated as ‘the former Yugoslav Republic of Macedonia’ has changed its name to ‘the Republic of North Macedonia’. That country should be

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referred to in the Annexes to Implementing Regulation (EU) 2015/2447 by that name, or, where appropriate, by the short form, 'North Macedonia'.

(16) In order to facilitate the use of the formats and codes of certain data requirements in the context of declarations and notifications in the various electronic systems, Annex B should be amended.

(17) It is necessary to correct an editorial error in Annex 33-07 to Implementing Regulation (EU) 2015/2447 as regards a reference to Delegated Regulation (EU) 2015/2446.

(18) Implementing Regulation (EU) 2015/2447 should therefore be amended and corrected accordingly.

(19) The amendments to Annexes 21-01 and 21-02 to Implementing Regulation (EU) 2015/2447 laid down in this Regulation should apply from 1 January 2020 because that is the date from which Member States are to implement the information-exchange obligations imposed by Regulation (EU) No 904/2010.

(20) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2015/2447

Implementing Regulation (EU) 2015/2447 is amended as follows:

(1) Article 55 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. The Commission shall only disclose the data referred in paragraph 1 provided by the customs authorities in aggregated form.;

(b) the following paragraphs are inserted:

3a. The Commission shall grant users authorised in accordance with Article 56(2) access to the non-aggregated data provided by the customs authorities of the Member State that requested their access and to data aggregated at Union level.

3b By derogation from paragraph 3a, the Commission shall grant access to the competent authorities of the Member States to the non-aggregated data where an act of the Union provides for such an access.;

(c) paragraph 6 is replaced by the following:

6. By derogation from paragraph 1, until the date of deployment of the upgrading of the National Import Systems referred to in the Annex to Implementing Decision (EU) 2016/578, the list of data which may be required by the Commission for the purposes of surveillance at release for free circulation is laid down in Annex 21-02.

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By derogation from paragraph 1, until the date of deployment of the upgrading of the National Export Systems referred to in the Annex to Implementing Decision (EU) 2016/578, the list of data which may be required by the Commission for the purposes of surveillance at export is laid down in Annex 21-02..

(2) In Article 187, paragraph 5 is replaced by the following:

5. Where goods for which the obligation to lodge an entry summary declaration is waived in accordance with Article 104(1)(c) to (k), (m) and (n), (2), (3) and (4) of Commission Delegated Regulation (EU) 2015/2446 are brought into the customs territory of the Union, the risk analysis shall be carried out upon presentation of the goods where available on the basis of the temporary storage declaration or the customs declaration covering those goods..

(3) In Article 214, the following paragraph is added:

3. The certification required in accordance with paragraph 1 may be provided by any relevant forms or documents other than on a printout of a fishing logbook including a reference to that fishing logbook..

(4) In Article 234, the following paragraph is added:

3. Where the supervising customs office has requested, in accordance with the third sub-paragraph of Article 182(3) of the Code, that goods be presented to customs because the customs authorities have identified a new serious financial risk or another specific situation in relation to an authorisation to lodge a customs declaration in the form of an entry in the declarant's records with waiver of the obligation to present the goods, the supervising customs office shall indicate to the holder of such authorisation:

a the specific period of time during which to present to customs the goods covered by those situations,

b the obligation to enter the date of notification of presentation in the records, and

c the obligation to comply with points (b) to (e) and (g) of paragraph 1.

In these situations, the release of the goods shall take place in accordance with Article 194 of the Code..

(5) In Article 302, paragraph 2, the following point is added:

(c) the goods are carried by sea and a reference to the accompanying bill of lading is mentioned in an electronic transport document used as customs declaration to place goods under the Union transit procedure, as referred to in Article 233(4)(e) of the Code..

(6) In Article 311, the following paragraphs are added:

3. Where the customs authority of a Member State involved in a transit operation obtains evidence, before the time-limit referred to in Article 77(a) of Delegated Regulation (EU) 2015/2446 expires, that the place where the events from which the customs debt arises occurred is in its territory, that authority shall immediately and in any event within that time-limit send a duly justified request to the customs authority of the Member State of departure to transfer the responsibility to start the recovery to the requesting customs authority.