Commission Delegated Regulation (EU) 2018/1063 of 16 May 2018 amending and correcting 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

COMMISSION DELEGATED REGULATION (EU) 2018/1063

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amending and correcting 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

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 2, 7, 24, 65, 88, 99, 142, 151, 156, 160, 212, 216, 231 and 253 thereof,

Whereas:

(1) The practical implementation of Regulation (EU) No 952/2013 (the Code) together 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.

(2) In Article 1(19) of Delegated Regulation (EU) 2015/2446, the definition of ‘exporter’ should be modified in relation to exports of goods that are not carried by a private individual in his personal baggage, in order to allow greater flexibility to business partners in the choice of the person which may act as exporter. The current definition is problematic insofar as it determines as ‘exporter’ only one person, who has to meet three cumulative requirements: being established in the customs territory of the Union, holding a contract with a consignee in a third country, and having the power to determine that the goods are to be brought outside the customs territory of the Union. Therefore, the new definition of ‘exporter’ should be less restrictive and limit the conditions for being an exporter to the essential requirements for the functioning of the export procedure: the exporter must have the power to determine that the goods are to be taken out of the customs territory of the Union and, in line with Article 170(2) of Regulation (EU) No 952/2013, the exporter must be established in the customs territory of the Union. Only in cases where the business partners do not agree on the person who may act as exporter or the person is not established in the customs territory of the Union, the exporter is determined by the customs legislation.

(3) In Article 5(1) of Delegated Regulation (EU) 2015/2446, persons requesting proof of customs status of Union goods, irrespective of whether they are established in the customs territory of the Union or not, should be required to register for an EORI number

so that they can access the UCC Proof of Union Status system as referred to in the Annex to Commission Implementing Decision (EU) 2016/578[(3)].

(4) The customs authorities need a permanent derogation from the obligation to use electronic data-processing techniques in relation to applications and decisions that occur rarely and for which the obligation to deploy electronic data-processing techniques would require a disproportionate economic effort. Given that the range of electronic data-processing techniques differs from Member State to Member State, the applications and decisions in relation to which this derogation should be granted also varies from Member State to Member State. All the Member States must use electronic data-processing techniques with respect to the applications and decisions for which common data requirements exist and for which common electronic systems have been deployed. Accordingly, a new Article 7a of Delegated Regulation (EU) 2015/2446 should be laid down allowing the use of other means than electronic data-processing techniques exclusively for applications and decisions for which the relevant data requirements are not set out in Annex A to Delegated Regulation (EU) 2015/2446.

(5) In order to avoid that the decision-making procedure is unduly delayed by an applicant not providing the right information to the customs authorities despite having been given the opportunity to do so, Article 10(a) of Delegated Regulation (EU) 2015/2446 should not extend the right to be heard to applicants who have been asked to provide relevant information and have failed to do so, resulting in the customs authorities not being able to accept their application.

(6) The definition of registered exporter in Article 37(21) of Delegated Regulation (EU) 2015/2446 should be clarified to also cover exporters established in a Member State and registered with the customs authorities of that Member State, for the purpose of exporting products originating in the Union to a country or territory with which the Union has a preferential trade arrangement, so as to allow those exporters to make out origin declarations for benefitting from the preferential trade arrangement concerned. By contrast, the definition should not include the registration of Union exporters for the purpose of replacing statements on origin when goods are re-consigned to Turkey, because replacement of a proof of origin in the EU when goods are re-consigned to Turkey is not applicable.

(7) Article 40 of Delegated Regulation (EU) 2015/2446 provides for the possibility to use means other than electronic data-processing techniques when submitting applications to become a registered exporter. This permanent derogation should be extended to all communication and exchanges of information in relation to applications and decisions concerning the status of a registered exporter and in relation to any subsequent applications and acts relating to the management of those decisions, as the existing electronic data processing system for registered exporters, the Registered Exporter System (REX) referred to in the Annex to Implementing Decision (EU) 2016/578, does not currently include a harmonised interface for communications with economic operators. The derogation is temporary and will not be needed once the REX system will provide that harmonized interface.

(8) In order to ensure compliance with the rules on origin of the goods, the customs authorities in Member States and the competent authorities in beneficiary countries applying bilateral or regional cumulation, as set out in Article 53 and Article 55(8) of Delegated Regulation (EU) 2015/2446, should carry out all the necessary verifications and controls of origin and not only control the issue or making out of proofs of origin.

(9) In order to make clearer the rule for determination of origin in the case of regional cumulation, the second and third subparagraphs of Article 55(4) and of Article 55(6) of Delegated Regulation (EU) 2015/2446 should be merged.

(10) In order to ensure consistency with the terms used in Article 166(1)(b) and (c), Article 167(1)(s), Article 168 and Article 169 of Delegated Regulation (EU) 2015/2446, the wording in Article 76 of that Delegated Regulation concerning the derogation for the calculation of the amount of import duty on processed products resulting from inward processing should be amended.

(11) For reasons of clarity, Article 82 of Delegated Regulation (EU) 2015/2446 should refer to the Annexes in which the relevant common data requirements for the undertaking of the guarantor are set out.

(12) In order to ensure consistency of the provisions concerning guarantees, the reference in Article 83 of Delegated Regulation (EU) 2015/2446 to Member States should be replaced by a reference to customs authorities.

(13) The time-limit for taking decisions on repayment or remission provided for in Article 97 of Delegated Regulation (EU) 2015/2446 should be extended where it is not possible for the competent customs authority to complete an assessment and take a decision on repayment or remission in the due period of time because the decision to be taken depends on the outcome of a case involving identical or comparable questions of facts and of law pending before the Court of Justice of the European Union in accordance with Article 267 of the Treaty on the Functioning of the European Union or of specific pending administrative procedures which may affect that decision. In order to ensure that the extension of the period to decide does not adversely affect the applicant, that extension should be possible only if the applicant does not oppose to it and should be clearly limited to those specific situations.

(14) In order to ensure the smooth flow in the trade of Union goods between parts of the customs territory of the Union to which Council Directive 2006/112/EC[(4)] or Council Directive 2008/118/EC[(5)] apply and parts of that territory where those provisions do not apply (special fiscal territories), Articles 114 and 134 of Delegated Regulation (EU) 2015/2446 should establish certain simplifications concerning the customs formalities and controls that are applicable to that trade when it takes place within the same Member State.

(15) Under Article 115 of Delegated Regulation (EU) 2015/2446 a place other than the competent customs office may be approved for the purposes of the presentation of goods under the condition that the goods are declared for a customs procedure or are re-exported within a very short period of time. That period should be slightly extended so that more economic operators can comply with that condition. The same extension

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2018/1063. (See end of Document for details)*

should apply to the condition regarding the approval of a place other than a temporary storage facility for temporary storage of goods.

(16) In order to protect the information on the place of catch of the fishery products when the printout of the fishing logbook is provided to the authorities of third countries so that those authorities can certify that sea-fishing products and goods transhipped and transported through their country or territory have not been manipulated, the economic operators should be allowed to remove that information from the fishing logbook printout for the purposes of that certification. In order to enable the allocation of the sea-fishing products and goods to the respective fishing logbook in the cases where the certification of non-manipulation is provided on a form or document other than the printout of the fishing logbook, the economic operator should include in that other form or document a reference to the respective fishing logbook.

(17) The possibility in Article 136 of Delegated Regulation (EU) 2015/2446 to declare a means of transport for temporary admission orally should be extended to cover the specific situations referred to Articles 214, 215 and 216 of that Delegated Regulation because the standard customs formalities are normally unnecessary for such goods.

(18) The calculation of the amount of import duty in certain cases of inward processing has been provided for twice in the same way in Articles 76(b) and 168(2) of Delegated Regulation (EU) 2015/2446. This overlap should be removed by deleting Article 168(2).

(19) End-use authorisations allowing the storage together of different products falling within Chapters 27 and 29 of the Combined Nomenclature (‘mixed storage’) should establish sufficient guarantees for the subsequent identification of the different goods that have been mixed and for enabling their supervision by customs. A similar provision to that existing under the repealed Commission Regulation (EEC) No 2454/93[(6)] should be introduced into Delegated Regulation (EU) 2015/2446.

(20) In order to ensure consistency with Article 118(4) of the Code, Article 189 of Delegated Regulation (EU) 2015/2446 should allow for defective goods or goods not complying with the terms of the contract to be placed under external transit procedure, instead of being taken out of the customs territory of the Union, both of which leads for those goods to the loss of their customs status of Union goods.

(21) With a view to simplifying the use of the export procedure followed by a transit procedure and in order to eliminate the risk that a customs debt and a debt for other charges not covered by a guarantee arises, Union goods exported to a third country and moved through the customs territory of the Union under a TIR operation or under a transit procedure in accordance with the ATA/Istanbul Convention should be required to be placed under the external transit procedure and hence become non-Union goods.

(22) In order to facilitate the supervision by the customs authorities of movements of goods referred to in Article 1 of Council Directive 2008/118/EC placed under the export procedure followed by the transit procedure, those goods should be allowed to be placed under the external transit procedure, by which they lose their customs status of Union goods.

(23) In order to facilitate the processing of applications by customs authorities and to make the application process more efficient for economic operators authorised consignors should be allowed to submit applications for an authorisation to use seals of a special type to the customs authority which is competent to grant the status of authorised consignor.

(24) A number of provisions relating to temporary admission refer to means of transport used privately or commercially. The meaning of those terms should be clarified for the purposes of all the rules on total relief from import duty in the context of temporary admission. The definitions laid down in Article 215(4) of Delegated Regulation (EU) 2015/2446 should therefore be converted into a more general rule in Article 207 of that Delegated Regulation.

(25) A new paragraph should be introduced into Article 215 of Delegated Regulation (EU) 2015/2446, so that natural persons who have their habitual residence in the customs territory of the Union may benefit from the temporary admission procedure so that they can use privately hired non-Union means of road transport in the Union. Opening this possibility would solve some problems facing car rental agencies and encourage border tourism. However, as temporary admission is mainly designed for persons established outside of the Union, Article 218 should limit such private use to a short period of time.

(26) The use of the temporary admission procedure in accordance with Article 218, Article 220, Article 223, Article 228 and Articles 231 to 236 of Delegated Regulation (EU) 2015/2446 should also be allowed where the holder of the procedure is established inside the customs territory of the Union. This flexibility is needed because there is no reason justifying a different treatment of persons established in and outside the customs territory of the Union for the purposes of temporary import of certain goods, such as goods to be exhibited or used at a public event.

(27) In order to ensure that the legal provisions are properly implemented in the relevant electronic systems, certain provisions of Annexes A and B to Delegated Regulation (EU) 2015/2446 should be amended.

(28) By Decision 94/800/EC[(7)] the Council approved the Agreement on Rules of Origin annexed to the final act signed in Marrakesh on 15 April 1994. Annex 22-01 to Delegated Regulation (EU) 2015/2446 provides for specific rules for determining the country where certain goods underwent their last substantial transformation within the meaning of Article 32 of the same Regulation. Such a list of rules should be extended to include additional products in order to allow a uniform interpretation of the principle of the last substantial transformation for those products. In addition, to ensure that the rules are properly applied, the list is updated to the last version of the goods nomenclature established under the International Convention on the Harmonized Commodity Description and Coding System (Harmonised System).

(29) Following the publication of Delegated Regulation (EU) 2015/2446, some errors of different types have been detected and need to be corrected. In Articles 124a, 126a, 129a, 129d, 131, 193, 195 and 197, the reference to the Articles of the Code being supplemented needs to be more precise. In Annexes A and B, certain data element need