Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446

COMMISSION DELEGATED REGULATION (EU) 2016/341

of 17 December 2015

supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446

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 the Council of 9 October 2013 laying down the Union Customs Code ('the Code')[(1)], and in particular Articles 6, 7, 131, 153, 156, and 279 thereof,

Whereas:

(1) The Code in accordance with Article 290 of the Treaty, delegates on the Commission the power to supplement certain non-essential elements of the Code.

(2) The Code promotes the use of information and communication technologies, as laid down in Decision No 70/2008/EC of the European Parliament and of the Council[(2)], which it recognises as a key element in ensuring trade facilitation and, at the same time, the effectiveness of customs controls. More specifically, according to Article 6(1) of the Code, all exchange of information between customs authorities and between economic operators and customs authorities and storage of such information is to be made using electronic data processing techniques. As a general rule, information and communication systems need to offer the same facilities to economic operators in all Member States.

(3) Based on the existing planning document related to all IT-related customs projects drawn up in accordance with Decision 70/2008/EC, Commission Implementing Decision 2014/255/EU[(3)] ('the Work Programme') contains a list of the electronic systems which are to be developed by Member States and, where applicable, in close cooperation by Member States and the Commission, in order for the Code to become applicable in practice.

(4) In this regard, Article 278 of the Code provides that means for the exchange and storage of information other than electronic data-processing techniques may be used on a transitional basis until 31 December 2020 at the latest, where the electronic systems

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which are necessary for the application of the provisions of the Code are not yet operational.

(5) While, in principle, the transitional measures contained in this Regulation should be applicable until 31 December 2020 at the latest, in view of the practical and project management considerations of the Work Programme, where the date of deployment of an electronic system falls before the final date laid down in the Code for the application of transitional provisions, the use of the relevant means for the exchange and storage of information other than electronic data-processing techniques provided in this Regulation should, in the interest of protecting the legal certainty of operators, be accepted as an alternative to the relevant electronic system, where deployed, and then suspended.

(6) Given the non-availability of the electronic systems necessary for the exchange of information between the customs authorities and between economic operators and customs authorities, transitional measures relating to the form of such applications and decisions should be laid down. Any processing of personal data under this Regulation should be in full compliance with the Union and national data protection provisions in force.

(7) Where consultations between customs authorities of more than one Member State need to take place before the adoption of a decision relating to the application of the customs legislation, insofar as this consultation would concern the exchange and storage of data through electronic means not yet deployed, transitional measures need to be set up to ensure that such consultations can continue to take place.

(8) Since the electronic system relating to binding tariff information ('BTI') is yet to be upgraded, in order to offer traders assistance in the determination of the correct tariff classification, the currently used means for BTI applications and decisions, in paper and electronic form, should continue to be used until the system is fully upgraded.

(9) Since the electronic system which is necessary for the application of the provisions of the Code governing both the application for and the authorisation granting the status of an authorised economic operator ('AEO') is yet to be upgraded, the currently used means, in paper and electronic form need to continue to be used until the system is upgraded.

(10) Since for the period until the upgrading of the National Import Systems, the current system for the declaration of particulars relating to customs value ('DV1') needs to be used, transitional provisions relating to the communication of certain elements concerning the customs value of goods should be laid down in this Regulation.

(11) Article 147 of Commission Implementing Regulation (EU) 2015/2447[(4)] refers to an electronic system set up for the exchange and storage of information pertaining to guarantees which may be used in more than one Member State. In the absence of that electronic system, other means of storage and exchange of this information should be provided for.

(12) Since the Import Control System, which is necessary for the application of the provisions of the Code governing the entry summary declaration, is not yet fully

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upgraded, the currently used means for the exchange and storage of information other than the electronic data-processing techniques referred to in Article 6(1) of the Code should have to continue to be used.

(13) In the same respect, because the current Import Control System is capable of only receiving an entry summary declaration by the submission of one dataset, the Articles stipulating the provision of data in more than one dataset should, until the upgrading of the ICS, be temporarily suspended and alternative requirements should be laid down.

(14) In order to support and ensure the customs formalities related to the entry of goods with regard to safety and security of the Union and its citizens and to ensure that customs supervision begins at the appropriate time and is duly performed prior to the deployment of the Notification of Arrival, Presentation Notification and Temporary Storage systems, alternative means for exchange and storage of information should be laid down to govern notification of arrival, diversion notification, presentation notification, and temporary storage.

(15) In order to ensure the smooth functioning of operations related to the placing of goods under a certain customs procedure, the use of paper-based customs declarations should be allowed alongside the existing National Import Systems as long as the latter are not upgraded.

(16) Considering that the new datasets and formats required by the Code and the provisions adopted based on the Code in relation thereto will not be available until the National Import Systems are upgraded, the possibility should be laid down for customs declarations to be lodged with a different dataset with a view to guaranteeing legal certainty for operators.

(17) While using the simplified declaration, and until the upgrading of the Automated Export System and the National Import Systems, operators should be provided with different deadlines to lodge the supplementary declaration. Member States should thus be able to provide for deadlines other than those outlined in Article 146 of Commission Delegated Regulation (EU) 2015/2446[(5)].

(18) In the same vein, during the transitional period, Member States should be permitted to authorise a simplified customs declaration to take the form of a commercial or administrative document.

(19) In the cases where a customs declaration is lodged prior to the presentation of the goods, before the electronic systems therefor are deployed and upgraded, the notification of presentation of goods should be permitted to be lodged to customs authorities through the existing national systems or other means.

(20) The obligation to lodge customs declarations by means of electronic exchange of information provided in Article 6(1) of the Code and the ending of the current waivers from the obligation to lodge summary declarations for postal consignments pose significant challenges for postal operators. The possibility to use a declaration with a reduced data set for some postal consignments also requires adjustments in the data flow and the supporting IT infrastructure of postal operators and the customs authorities

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of the Member States. Therefore, transitional rules are necessary in order to allow for smooth adjustments to the rules laid down in the Delegated Regulation (EU) 2015/2446.

(21) In the absence of the UCC Customs Decisions system, all information in relation to the application and authorisation for centralised clearance should continue to be published during the transitional period for access by the Commission and Member States for monitoring purposes.

(22) In order to allow for the smooth and uninterrupted transit of goods by rail, prior to the upgrading of the New Computerised Transit System ('NCTS'), rules for the continuation of the paper-based Union transit procedure for goods carried by rail should be set up.

(23) Rules for the continuation of the use of manifests in paper or in electronic form should be established to ensure the continuous and effective movement by airline and shipping companies until the relevant economic operators systems are upgraded.

(24) To ensure the effective operation of the above-described transitional arrangements, certain provisions of Delegated Regulation (EU) 2015/2446 should equally be amended.

(25) None of the provisions of this Regulation should impose a requirement on the Commission or the Member States to upgrade or deploy technical systems other than in accordance with the target dates set out in the Annex to Implementing Decision 2014/255/EU.

(26) The provisions of this Regulation should apply as from 1 May 2016 in order to enable the full application of the Code.

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

1 This Regulation lays down transitional measures on the means for the exchange and storage of data referred to in Article 278 of the Code until the electronic systems which are necessary for the application of the provisions of the Code are operational.

2 Data requirements, formats, and codes, which are to be applied for the transitional periods set out in this Regulation, Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013, and in Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013, are laid down in the Annexes to this Regulation.

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SECTION 1

Decisions relating to the application of the customs legislation

Article 2

Applications and decisions

Until the date of deployment of the UCC Customs Decisions system referred to in the Annex to Implementing Decision 2014/255/EU, customs authorities may allow for means other than electronic data-processing techniques to be used in relation to applications and decisions and to any subsequent event which may affect the original application or decision that have an impact in one or several Member States.

Article 3

Means of exchange and storage of information

1 Until the date of deployment of the UCC Customs Decisions system referred to in the Annex to Implementing Decision 2014/255/EU, customs authorities shall ensure the availability of means of exchange and storage of information so as to ensure consultations which are to take place in accordance with Article 14 of Implementing Regulation (EU) 2015/2447.

2 Each customs authority shall designate contact points responsible for any exchange of information between themselves and other customs authorities as well as between themselves and the Commission, and shall communicate the contact details of the contact points to the Commission.

3 The Commission shall make the list of contact points available on its website.

SECTION 2

Decisions relating to BTI

Article 4

Form of BTI applications and decisions

1 Until the dates of the upgrading of the BTI system referred to in the Annex to Implementing Decision 2014/255/EU, customs authorities may allow for means other than electronic data-processing techniques to be used for applications and decisions relating to BTI or for any subsequent event which may affect the original application or decision.

2 In the cases referred to in paragraph 1, the following shall apply:

a until the date of the upgrading of the first phase of the electronic system:

(i) applications for a BTI decision shall be made using the format of the form set out in Annex 2; and

(ii) BTI decisions shall be taken using the format of the form set out in Annex 3;

b from the date of the upgrading of the first phase of the electronic system until the date of the upgrading of the second phase of the electronic system: