Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters

REGULATION (EU) 2015/1525 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 9 September 2015

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33 and 325 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) In order to ensure that Council Regulation (EC) No 515/97[(2)] covers all possible movements of goods in relation to the customs territory of the Union, it is appropriate to clarify the definitions of ‘customs legislation’ and ‘carriers’ with regard to the concepts of entry and exit of goods.

(2) With a view to further enhancing administrative and criminal procedures for dealing with irregularities, it is necessary to ensure that evidence obtained through mutual assistance can be considered as admissible in proceedings before the administrative and judicial authorities of the Member State of the applicant authority.

(3) With a view to increasing clarity, consistency and transparency, it is necessary to determine in more concrete terms the authorities which should have access to the directories established on the basis of Regulation (EC) No 515/97. For that purpose, a uniform reference to competent authorities should be established. Direct access for those authorities is an important condition for the effective implementation of the mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

(4) Data concerning container movements make it possible to identify fraud with regard to goods that are moved in and out of the customs territory of the Union. Such data serve to assist in preventing, investigating and prosecuting operations which constitute, or appear to constitute, breaches of customs legislation. In order to collect and use a set of data as complete as possible, while avoiding potential negative impacts on small and medium-sized enterprises in the freight forwarding sector, it is necessary that carriers submit to the Member States data concerning container movements in so far as they collect such data in electronic formats by way of their equipment tracking systems or have such data stored on their behalf. Such data should be directly transmitted to a single directory established by the Commission for that purpose.

(5) In order to ensure a high level of consumer protection, the Union has a duty to combat customs fraud and thus contribute to the internal market's objective of having safe products with genuine certificates of origin.

(6) The detection of fraud depends significantly on the identification and cross-analysis of relevant operational data sets. It is necessary therefore to establish, at Union level, a directory containing data on the import, export and transit of goods, including the transit of goods within the Member States and direct exports. For that purpose, the Commission should systematically replicate data from the sources operated by the Commission into the import, export and transit directory, and Member States should have the option to supply to the Commission data relating to transit of goods within a Member State and direct exports, depending on the availability of data and Member States' information technology infrastructure.

(7) The introduction, pursuant to Decision No 70/2008/EC of the European Parliament and of the Council[(3)], of the electronic customs systems in 2011, by which documents supporting imports and exports are no longer kept by customs authorities but by economic operators, has led to delays in the conduct of European Anti-fraud Office (OLAF) investigations in the customs area, as OLAF relies on those authorities to help it obtain such documents. Moreover, the three-year limitation period to recover customs debt puts additional constraints on the successful conduct of investigations. In order to accelerate the conduct of investigations in the area of customs, in addition to the other possibilities for the Commission to obtain information concerning declarations, the procedure in accordance with which the Commission may request from Member States documents supporting import and export declarations should be specified.

(8) In order to ensure the confidentiality and increase the security of data entered into the directories established on the basis of this Regulation and of Regulation (EC) No 515/97, provision should be made for limiting access to those data to specific users and for defined purposes only.

(9) Regulation (EC) No 515/97 provides for the processing of data. Such processing may also cover personal data and should be carried out in accordance with Union law. In particular, the processing of personal data should be carried out in a manner compatible with the purpose of that Regulation and in accordance with Directive 95/46/EC of the European Parliament and of the Council[(4)] and Regulation (EC) No 45/2001 of the European Parliament and of the Council[(5)] and, in particular, with Union requirements

relating to data quality, to proportionality, to purpose limitation, and to rights to information and to access, rectification, erasure and blocking of personal data, with organisational and technical measures and with international transfers of personal data. Specific provision should be made for limiting access to data entered to specific users only, in order also to ensure the confidentiality of data entered.

(10) The Commission and Member States should protect confidential business information and they should ensure the confidential treatment of information exchanged by means of the directory of reported Container Status Messages and the import, export and transit directory.

(11) In order to ensure up-to-date information and to guarantee the right to transparency and right to information of data subjects as set out in Regulation (EC) No 45/2001 and Directive 95/46/EC, it should be possible for the Commission to publish on the internet updates to the lists of competent authorities designated by the Member States and the Commission departments authorised to have access to the CIS.

(12) The processing of personal data for the purposes of Regulation (EC) No 515/97 and any delegated and implementing acts adopted pursuant thereto should observe the fundamental right to respect for private and family life recognised by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the rights to respect for private and family life, and the right to the protection of personal data, recognised, respectively, by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. Such delegated and implementing acts should also ensure that any processing of personal data takes place in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001.

(13) In order to improve the consistency of data protection supervision, the European Data Protection Supervisor should cooperate closely with the Joint Supervisory Authority set up under Council Decision 2009/917/JHA[(6)], with a view to achieving coordination of the audits of the CIS.

(14) The provisions governing the storage of data in the CIS frequently result in unjustifiable losses of information. This is because Member States do not systematically carry out the yearly reviews due to the administrative burden involved and the lack of appropriate resources. It is therefore necessary to simplify the procedure governing the storage of data in the CIS by removing the obligation to review data annually and by setting a maximum storage period of five years which can be increased, subject to justification, by an additional period of two years, corresponding to periods provided for the directories established on the basis of Regulation (EC) No 515/97. That period is necessary due to the long procedures for processing irregularities and because those data are needed for the conduct of joint customs operations and of investigations.

(15) In order to further enhance the possibilities for the analysis of fraud and to facilitate the conduct of investigations, data concerning current investigation files stored in the Customs files identification database should be rendered anonymous, when one year has elapsed since the last observation, and should thereafter be retained in a form in which identification of the data subject is no longer possible.

(16) Since the objective of this Regulation, namely to improve the detection, investigation and prevention of customs-related fraud in the Union cannot be sufficiently achieved by the Member States but can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

(17) Carriers who, at the time of the entry into force of this Regulation, are bound by private contract obligations as regards the supply of data on container movements, should be entitled to benefit from a deferred application of their obligation to report Container Status Messages (CSMs), in order to renegotiate their contracts and to ensure that future contracts are compatible with the obligation to provide data to the Member States.

(18) Regulation (EC) No 515/97 confers powers on the Commission to implement some of the provisions of that Regulation. As a consequence of the entry into force of the Treaty of Lisbon, the powers conferred on the Commission under that Regulation need to be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

(19) In order to supplement certain non-essential elements of Regulation (EC) No 515/97 and in particular to specify the information to be entered into the CIS, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to determine the operations in connection with the application of agricultural legislation for which information has to be introduced into the CIS. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and, where appropriate, with business representatives. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(20) In order to ensure uniform conditions for the implementation of Regulation (EC) No 515/97, implementing powers should be conferred on the Commission in respect of the frequency of reporting CSMs, the format of the CSM data, the method of transmission of the CSMs and the specific elements to be included in the CIS relating to each of the categories in which data should be entered. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[7]. The examination procedure should be used for the adoption of implementing acts.

(21) The European Data Protection Supervisor has been consulted and issued an opinion on 11 March 2014.

(22) Regulation (EC) No 515/97 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 515/97 is amended as follows:

(1) Article 2(1) is amended as follows:

(a) the first indent is replaced by the following:

— "customs legislation" means customs legislation as defined in point 2 of Article 5 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(8)],;

(b) the following indents are added:

— "customs territory of the Union" means the customs territory of the Union as defined in Article 4 of Regulation (EU) No 952/2013,

— "carriers" means the persons within the meaning of point 40 of Article 5 of Regulation (EU) No 952/2013.;

(2) Article 12 is replaced by the following:

Article 12

Without prejudice to Article 51, information, including documents, certified true copies of documents, attestations, all instruments or decisions which emanate from administrative authorities, reports and any intelligence, obtained by the staff of the requested authority and communicated to the applicant authority in the course of the assistance provided for in Articles 4 to 11 may constitute admissible evidence in the same way as if they had been obtained in the Member State where the proceedings take place:

(a) in administrative proceedings of the Member State of the applicant authority, including subsequent appeal procedures;

(b) in judicial proceedings of the Member State of the applicant authority, unless otherwise explicitly stated by the requested authority at the time of communication of the information.;

(3) Article 16 is replaced by the following:

Article 16

Without prejudice to Article 51, information, including documents, certified true copies of documents, attestations, all instruments or decisions which emanate from administrative authorities, reports and any intelligence, obtained by the staff of the communicating authority and communicated to the receiving authority in the course of the assistance provided for in Articles 13 to 15 may constitute admissible evidence in the same way as if they had been obtained in the Member State where the proceedings take place:

(a) in administrative proceedings of the Member State of the receiving authority, including subsequent appeal procedures;

(b) in judicial proceedings of the Member State of the receiving authority, unless otherwise explicitly stated by the communicating authority at the time of communication of the information.;

(4) Article 18a is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

1. Without prejudice to the competences of the Member States and with a view to assisting the authorities referred to in Article 29 to detect movements of goods that are the object of operations in potential breach of customs and agricultural legislation, and means of transport, including