Commission Regulation (EC) No 312/2009 of 16 April 2009 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

COMMISSION REGULATION (EC) No 312/2009

of 16 April 2009

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(1)], and in particular Article 247 thereof,

Whereas:

(1) Annex 37 to Commission Regulation (EEC) No 2454/93[(2)] provides that a number identifying the person concerned is to be entered in the customs declaration in certain cases. However, the type of identification number to be used is established by the Member States and Member States require the person concerned to be registered in their national systems. As a result, economic operators and other persons wishing to import goods, move goods under a transit procedure, export goods or apply for an authorisation to use customs simplifications or customs procedures in different Member States are obliged to register and to obtain a different identification number in each of those Member States.

(2) The measures to enhance security, introduced by Regulation (EEC) No 2913/92, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council[(3)], provide for the analysis of risks and the electronic exchange of risk-related information between customs authorities and between those authorities and the Commission under a common risk management framework, for the customs authorities to receive pre-arrival and pre-departure information on all goods entering or leaving the customs territory of the Community, and for granting the status of Authorised Economic Operator to reliable economic operators who meet certain conditions. In order to enhance the effectiveness of those measures, it should be possible to identify the persons concerned by reference to a common number unique to each of those persons.

(3) It is therefore necessary to provide for an Economic Operators Registration and Identification number (EORI number) to be assigned to each economic operator and, where appropriate, to other persons to serve as a common reference in their relations with customs authorities throughout the Community and for the exchange of information between the customs authorities and between customs authorities and other authorities. To ensure that it is unique, only one number should be used in respect of a given person.

Changes to legislation: *Commission Regulation (EC) No 312/2009 is up to date with all changes known to be in force on or before 18 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) Certain provisions of Regulation (EEC) No 2454/93 may require persons other than economic operators to provide an EORI number where they have relations with customs authorities. Member States must therefore be allowed to register those persons.

(5) To limit the need for substantial changes to existing national registration systems and legal provisions, and to facilitate the integration of the central system with other national systems, it is appropriate to provide that economic operators, and where appropriate, other persons are to apply for and are to be assigned the EORI number by the Member States.

(6) In view of the diversity of the authorities involved in the registration of economic operators and other persons in the Member States, each Member State should designate the authority or authorities that will assign the EORI numbers and register the operators and other persons concerned.

(7) To reduce the administrative burden on economic operators and other persons, they should be able to obtain an EORI number that is valid in other Member States by registering in one Member State. For the purposes of simplifying the processing of information and facilitating contacts with customs authorities, once this number has been assigned, economic operators and other persons should be obliged to use that unique number in all communications with customs authorities where an identifier is required.

(8) For reasons of administrative simplification and to provide easy and reliable access to data for customs authorities, a central electronic system should be developed for storing and exchanging data on the registration of economic operators and other persons and on the EORI numbers.

(9) In order to develop a central electronic system and ensure that it operates smoothly and securely, Member States and the Commission should cooperate closely.

(10) Data available in the central system should be used in the exchange of information between the customs authorities and other national authorities only to the extent that their access to such data is necessary for the purpose of meeting their legal obligations in respect of the movement of goods concerned by a customs procedure.

(11) Publication of EORI numbers and limited registration data of economic operators and other persons is a tool enabling other parties to verify those data. EORI numbers and some limited registration data should therefore be published. However, taking into account the consequences of publication, it should take place only where the economic operator or other person has freely given specific and informed written consent thereto.

(12) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[4] and the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the

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processing of personal data by the Community institutions and bodies and on the free movement of such data[(5)].

(13) Pursuant to Article 28 of Directive 95/46/EC, the national supervisory authorities should monitor the lawfulness of the processing of personal data by the Member States, while, pursuant to Article 46 of Regulation (EC) No 45/2001, the European Data Protection Supervisor should monitor the activities of the Community institutions and bodies in relation to the processing of personal data in view of the limited tasks of the Community institutions and bodies with regard to the data, and these authorities, acting within the scope of their respective competences, should cooperate actively and ensure coordinated supervision of processing carried out in pursuance of this Regulation.

(14) In the light of the experience gained since the adoption of Commission Regulation (EC) No 1875/2006[(6)] amending Regulation (EEC) No 2454/93, it is necessary to adjust and specify certain details concerning pre-arrival and pre-departure declarations to be provided to the customs authorities on goods entering and leaving the customs territory of the Community.

(15) More detailed rules are in particular required with regard to the information exchange between the operator of the means of transport and the customs office of entry in cases where a means of transport arrives at a port or airport other than that declared in the entry summary declaration.

(16) Furthermore, it should be specified in which cases and in which form the operator of the means of transport is to notify the customs office of entry of the arrival of the means of transport.

(17) More detailed rules are necessary defining the person responsible for providing information on non-Community goods which are in temporary storage upon their arrival in the customs territory of the Community. Such information should be derived as much as possible from data already available to the customs authorities.

(18) Additional cases have been identified in which no pre-arrival or pre-departure declaration is required, in particular with regard to goods destined for drilling or production platforms or coming from such platforms, as well as weapons and military equipment transported by, or on behalf of, the military authorities of a Member State. Furthermore, in order to limit the burden for economic operators, consignments of goods the intrinsic value of which does not exceed EUR 22 should be exempted from pre-arrival and pre-departure declarations subject to certain conditions. Where such exemptions apply, risk analysis should be carried out upon arrival or departure of the goods on the basis of the summary declaration for temporary storage or the customs declaration for the goods concerned.

(19) It is also necessary to specify the treatment of pre-departure declarations for which no exit confirmation has been sent by the customs office of exit to the customs office of export, and to provide for an enquiry and information procedure between the customs offices of export and exit. Furthermore, it should be possible for the customs office of export to close export movements for which no exit confirmation has been received

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from the customs office of exit, either on the basis of evidence submitted by the exporter or declarant or following the expiry of a specified time limit.

(20) Regulation (EC) No 1875/2006 introduced in Regulation (EEC) No 2454/93 a number of measures with respect to the data to be collected for entry and exit summary declarations. Certain technical developments in the information technology necessary to implement those measures have shown that some adjustments to those data, set out in Annex 30A to Regulation (EEC) No 2454/93, are necessary.

(21) In order to better identify cases where simplified data sets can be used for certain categories of declarations, the 'Mode of transport' should be a mandatory data element.

(22) The best method for an unambiguous identification of the means of transport is the use of the IMO ship identification number (Unique European Vessel Identification Number) and of the unique European Vessel Identification Number (ENI). Those data should therefore be provided instead of the name of the vessel.

(23) Since the carrier has to be informed wherever the entry summary declaration is lodged by another person, it is necessary to collect the reference of the carrier transport document number.

(24) The possible fluctuations of international transport operations make it necessary to provide for the possibility to lodge diversion requests. For that purpose a new table for diversion requests data requirements should be inserted.

(25) As a result of the requirement to provide the EORI number there will no longer be a need to use code numbers to identify parties and, as regards postal consignments, references to postal declarations should be replaced by references to the provision of data by postal services.

(26) As a consequence of the adjustments made in respect of data requirements, the explanatory notes for the data elements concerned should be adjusted accordingly.

(27) Regulation (EEC) No 2454/93 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

1. in Article 1, the following points 16 and 17 are added:

16. EORI number (Economic Operators Registration and Identification	:	a number, unique in the European Community, assigned by a Member State customs authority or designated authority or authorities to economic operators and to other persons in accordance with the rules laid down in Chapter 6.

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number) means

17. Entry summary declaration means : the summary declaration referred to in Article 36a of the Code to be lodged for goods brought into the customs territory of the Community, except where otherwise provided for in this Regulation.;

2. in Part I, Title I, the following Chapter 6 is added:

CHAPTER 6

Registration and Identification System

Article 4k

1 The EORI number shall be used for the identification of economic operators and other persons in their relations with the customs authorities.

The structure of the EORI number shall comply with the criteria set out in Annex 38.

2 If the authority responsible for assigning the EORI number is not the customs authority, each Member State shall designate the authority or authorities responsible for registering economic operators and other persons and assigning them EORI numbers.

The Member State customs authorities shall communicate to the Commission the name and the address details of the authority or authorities responsible for assigning the EORI number. The Commission shall publish this information on the Internet.

3 Subject to paragraph 1, Member States may use as an EORI number a number already assigned to an economic operator or to another person by the competent authorities for tax, statistical or other purposes.

Article 4l

1 An economic operator established in the customs territory of the Community, shall be registered by the customs authority or the designated authority of the Member State in which he is established. Economic operators shall apply for registration before they start activities referred to in Article 1(12). However, economic operators who have not applied for registration may do so during their first operation.

2 In the cases referred to in Article 4k(3), Member States may waive the obligation for an economic operator or another person to apply for an EORI number.

3 Where an economic operator not established in the customs territory of the Community does not have an EORI number, he shall be registered by the customs authority or the designated authority of the Member State where he first performs one of the following:

a he lodges in the Community a summary or customs declaration other than:

(i) a customs declaration made in accordance with Articles 225 to 238; or

(ii) a customs declaration made for the temporary importation procedure;

b he lodges in the Community an exit or entry summary declaration;