Commission Regulation (EC) No 1192/2008 of 17 November 2008 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 1192/2008

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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) Commission Regulation (EEC) No 2454/93[(2)] currently lays down provisions on single authorisations involving customs administrations in more than one Member State for customs procedures with economic impact and end-use only.

(2) Taking into account the Lisbon strategy, which aims at making the EU the most competitive economy in the world, it is crucial to create a modern and simplified environment with conditions for a real internal market where trade competitiveness will increase and distortion of competition between companies in different Member States is avoided. Single authorisations for simplified procedures, as well as the integrated single authorisation, allow operators to centralise and integrate accounting, logistics and distribution functions with consequent savings in administrative and transaction costs, and is a genuine simplification. It is therefore appropriate to extend the provisions on single authorisations to the use of the simplified declaration and to the local clearance procedure.

(3) Accordingly, it is appropriate to merge the existing definitions of 'single authorisation' relating to customs procedures with economic impact and end-use with those for the simplified declaration and the local clearance procedure, due to the fact that these procedures may be combined when used.

(4) Commission Regulation (EC) No 1875/2006[(3)] amending Regulation (EEC) No 2454/93, has laid down the minimum particulars to be declared under the simplified declaration procedure or entered in the records under the local clearance procedure. Under single authorisations, the minimum particulars to be declared under the simplified declaration procedure should be the maximum data that can be made available to a customs office in another Member State.

(5) As AEO certificates, and notably those for customs simplifications, will often be combined with single authorisations, it is appropriate to align the rules on the granting,

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suspension and revocation of both types of authorisation as much as possible, including the provisions on records allowing the appropriate audit of the procedure.

(6) Carriers, freight forwarders and customs agents who are holders of an AEO certificate have easier access to customs simplifications, including for the use of simplified declaration and of local clearance procedure. It is therefore appropriate to provide that representatives can be granted an authorisation for the simplified declaration or the local clearance procedure, provided they fulfil certain conditions and criteria.

(7) It is necessary to improve the application and authorisation procedure for single authorisations by reducing the time taken to exchange information and by developing common rules, to avoid delays in granting such authorisations. These rules should allow the customs authorities to supervise and monitor operations under single authorisations without administrative arrangements disproportionate to the economic needs involved.

(8) The conditions and criteria for granting both national and single authorisations for the simplified declaration and the local clearance procedure should be identical in order to achieve harmonisation within the single market.

(9) It is necessary to establish common rules for the amendment, suspension and revocation of authorisations for the simplified declaration and the local clearance procedure, to ensure common practice throughout the customs territory of the Community.

(10) In order to achieve the objective of improving the application and authorisation procedures, it is necessary to introduce an electronic communication and database system for single authorisations, to be used for information and communication exchange between the customs authorities and to inform the Commission and economic operators. This system should be an extension of the information and communication system provided for the granting of AEO certificates.

(11) The use of the simplified declaration and the local clearance procedure should, after a transitional period, only be allowed for economic operators lodging electronic customs declarations or notifications as required by a simple and paperless environment.

(12) It should be clarified that a customs declaration can, with the approval of the customs authority or authorities involved in granting an authorisation, be lodged at a customs office different from the one where the goods are presented or will be presented or made available for control.

(13) As regards transit formalities, it is appropriate, until the time when Regulation (EC) No 1875/2006 applies, that when those formalities are carried out using an electronic data-processing technique, the summary declaration be accepted on the basis of the ‘anticipated arrival record’ message.

(14) In accordance with Regulation (EEC) No 2454/93, as amended by Council Regulation (EC) No 837/2005[(4)] requiring transit declarations to be lodged using computer methods as from 1 July 2005, all economic operators should lodge their transit declarations in the customs computerised transit system. In addition, it should be made possible for travellers to lodge the transit declarations drawn up in writing to the customs authorities,

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who should ensure that the transit data is exchanged between customs authorities using information technology and computer networks.

(15) The Convention of 20 May 1987 on a common transit procedure[(5)] has been amended in line with the obligation to lodge the common transit declarations in standard procedure by using an electronic data-processing technique and the parallel provisions belonging to the Community legislation should be adapted accordingly.

(16) In these circumstances, the implementing provisions of the Community transit procedure based on the submission of the transit declaration made in writing, including those provisions concerning documents which relate to the declaration, should be adapted to the obligation to lodge Community transit declarations in the standard procedure by using an electronic data-processing technique.

(17) Except in the case of travellers, the use of declarations made in writing and the associated documents should be circumscribed to the fallback procedure enabling the operators to carry out the transit operations when the customs computerised transit system, or when the computerised system of the authorised consignor or of the principal does not function, or when the network between the latter and the customs authorities is not functioning.

(18) It is necessary to use data processing techniques for TIR operations that take place within the customs territory of the Community, in order to ensure an efficient exchange of data and the same level of customs control as under the Community/common transit procedure.

(19) TIR operations in the customs territory of the Community should be integrated into the electronic environment introduced by Regulation (EC) No 1875/2006 providing for the lodging of pre-arrival and pre-departure declarations by electronic means.

(20) The use of electronic data should eliminate the need to return the appropriate part of TIR carnet voucher No 2 within the customs territory of the Community whenever the computerised system is used and, as a consequence, should reduce the number of unnecessary enquiry procedures. It should also improve the efficiency and security of TIR operations, as the computerised system accelerates their supervision which provides tangible benefits to both customs administrations and economic operators.

(21) It is appropriate to provide that the holder of the TIR carnet lodges the TIR carnet data at the office of departure or entry using a data-processing technique. However, any legal consequences arising from a discrepancy between the electronic TIR carnet data lodged and the TIR carnet should be based on the TIR carnet particulars, in conformity with the TIR Convention. The formalities concerning parties other than the customs authorities of the Community should continue to be fulfilled on the basis of the TIR carnet, including the use of the TIR carnet as proof of an international guarantee.

(22) A waiver from the obligation to lodge the TIR carnet data by means of a data-processing technique should only be permitted in exceptional cases, where the customs' computerised transit system or the application for lodging the declaration is not functioning, or where the network between these two systems is not working.

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(23) For the sake of clarity, in Article 453(2) of Regulation (EEC) No 2454/93 reference should be made to the rule allowing the establishment of Community status of goods placed under the TIR procedure.

(24) The particulars on the data to be provided in the computerised system for the electronic TIR carnet data should be integrated into the rules and codes for electronic transit declarations specified in Annexes 37a and 37c.

(25) In order to simplify and accelerate the publication of any amendments to the list of coordinating offices designated by the Member States for any action concerning infringements or irregularities relating to ATA carnets, this publication should be made via the official website of the European Union on the Internet.

(26) The regular review of the list of goods which involve higher risk of fraud in the course of a transit operation, as set out in Annex 44c to Regulation (EEC) No 2454/93 conducted under Article 340a of that Regulation on the basis of information collected from Member States, has shown that certain goods which appear in that list are no longer considered to involve a higher risk of fraud. It is therefore appropriate to adjust the list in Annex 44c accordingly.

(27) Annex 67 of Regulation (EEC) No 2454/93 contains a common application and authorisation form for customs procedures with economic impact and for end-use. This form is to be used whether one or more than one customs administration is involved. It is appropriate to extend the use of Annex 67 to cases where an application is made for an authorisation to use the simplified declaration or the local clearance procedure, both at national level and when more than one customs administration is involved.

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

(29) Since the amendments laid down in Decision 1/2008 of the EC-EFTA Joint Committee of Common Transit of 16 June 2008 amending the Convention of 20 May 1987 on a common transit procedure apply from 1 July 2008 and 1 July 2009, the corresponding provisions laid down in this Regulation should apply from the same dates.

(30) 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 13, 14 and 15 are added:

13. *Single authorisation means:*

an authorisation involving customs administrations in more than one Member State for one of the following procedures:

— the simplified declaration procedure pursuant to Article 76(1) of the Code, or

— the local clearance procedure pursuant to Article 76(1) of the Code, or

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— customs procedures with economic impact pursuant to Article 84(1)(b) of the Code, or

— end-use pursuant to Article 21(1) of the Code.

14. *Integrated authorisation means:*

an authorisation to use more than one of the procedures referred to in point 13; it may take the form of an integrated single authorisation where more than one customs administration is involved.

15. *Authorising customs authority means:*

the customs authority who grants an authorisation.

2. In Article 183, paragraph 3 is replaced by the following:

3. The summary declaration for goods that have been moved under a transit procedure for which the formalities are carried out by electronic data-processing techniques before being presented to customs shall take the form of the transit declaration transmitted to the office of destination using the "anticipated arrival record".

The summary declaration shall take the form of the copy of the transit document or of the Transit Accompanying Document where Article 353(2) is applied.

3. In Article 199, paragraphs 1 and 2 are replaced by the following:

1. Without prejudice to the possible application of penal provisions, the lodging of a declaration signed by the declarant or his representative with a customs office or a transit declaration lodged using electronic data-processing techniques shall render the declarant or his representative responsible under the provisions in force for:

— the accuracy of the information given in the declaration,

— the authenticity of the documents presented, and

— compliance with all the obligations relating to the entry of the goods in question under the procedure concerned.

2 Where the declarant uses data-processing systems to produce his customs declarations, including transit declarations made in accordance with Article 353(2)(b), the customs authorities may provide that the handwritten signature may be replaced by another identification technique which may be based on the use of codes. This facility shall be granted only if the technical and administrative conditions laid down by the customs authorities are complied with.

The customs authorities may also provide that declarations, including transit declarations made in accordance with Article 353(2)(b) produced using customs data-processing systems, may be directly authenticated by those systems, in place of the manual or mechanical application of the customs office stamp and the signature of the competent official.

4. In Article 201, the following paragraph 3 is added:

3. The customs authorities may allow the customs declaration to be lodged at a customs office different from the one where the goods are presented or will be presented or made available for control, provided that one of the following conditions is fulfilled: