Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

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amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 26, 95, 133 and 135 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) Council Regulation (EEC) No 2913/92[(3)] lays down the rules for the customs treatment of goods that are imported or to be exported.

(2) It is necessary to establish an equivalent level of protection in customs controls for goods brought into or out of the customs territory of the Community. In order to achieve this objective, it is necessary to establish an equivalent level of customs controls in the Community and to ensure a harmonised application of customs controls by the Member States, which have principal responsibility for applying these controls. Such controls should be based upon commonly agreed standards and risk criteria for the selection of goods and economic operators in order to minimise the risks to the Community and its citizens and to the Community's trading partners. Member States and the Commission should therefore introduce a Community-wide risk management framework to support a common approach so that priorities are set effectively and resources are allocated efficiently with the aim of maintaining a proper balance between customs controls and the facilitation of legitimate trade. Such a framework should also provide for common criteria and harmonised requirements for authorised economic operators and ensure a harmonised application of such criteria and requirements. The establishment of a risk management framework common to all Member States should not prevent Member States from controlling goods by spot-checks.

(3) Member States should grant the status of authorised economic operator to any economic operator that meets common criteria relating to the operator's control systems, financial solvency and compliance record. The status of authorised economic operator, once granted by one Member State, should be recognised by the other Member States, but

does not confer the right to benefit automatically in the other Member States from simplifications provided for in the customs rules. However, the other Member States should allow the use of simplifications by authorised economic operators provided they meet all the specific requirements for use of the particular simplifications. In considering a request to use simplifications, the other Member States need not repeat the evaluation of the operator's control systems, financial solvency or compliance record, which will already have been completed by the Member State that granted the operator the status of authorised economic operator, but should ensure that any other specific requirements for use of the particular simplification are met. The use of simplifications in other Member States may also be coordinated by agreement between the customs authorities concerned.

(4) Simplifications under the customs rules should continue to be without prejudice to customs controls as defined within the Community Customs Code, notably relating to safety and security. Such controls are the responsibility of the customs authorities and, while the status of authorised economic operator should be recognised by those authorities as a factor during risk analysis and in the granting of any facilitation to the economic operator with regard to controls relating to safety and security, the right to control should remain.

(5) Risk-related information on import and export goods should be shared between the competent authorities of the Member States and the Commission. To this end, a common, secure system should be set up, enabling the competent authorities to access, transfer and exchange this information in a timely and effective manner. Such information may also be shared with third countries where an international agreement so provides.

(6) The conditions under which information provided by economic operators to customs may be disclosed to other authorities in the same Member State, other Member States, to the Commission, or to authorities in third countries should be specified. For this purpose, it should be clearly indicated that 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 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 processing of personal data by the Community institutions and bodies and on the free movement of such data[(5)] apply to the processing of personal data by the competent authorities as well as by any other authority receiving data pursuant to the Community Customs Code.

(7) In order to allow for appropriate risk-based controls, it is necessary to establish the requirement of pre-arrival or pre-departure information for all goods brought into or out of the customs territory of the Community, except for goods passing through by air or ship without a stop within this territory. Such information should be available before the goods are brought into or out of the customs territory of the Community. Different timeframes and rules may be set according to the type of goods, of transport or of economic operator or where international agreements provide for special security

arrangements. In order to avoid security loopholes, this requirement should also be introduced with regard to goods brought into or out of a free zone.

(8) Regulation (EEC) No 2913/92 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION

Article 1

Regulation (EEC) No 2913/92 is hereby amended as follows:

1. Article 4 shall be amended as follows:

— the following points shall be inserted:

(4a) "Customs office of entry" means the customs office designated by the customs authorities in accordance with the customs rules to which goods brought into the customs territory of the Community must be conveyed without delay and at which they will be subject to appropriate risk-based entry controls;

(4b) "Customs office of import" means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods brought into the customs territory of the Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be carried out;

(4c) "Customs office of export" means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods leaving the customs territory of the Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be completed;

(4d) "Customs office of exit" means the customs office designated by the customs authorities in accordance with the customs rules to which goods must be presented before they leave the customs territory of the Community and at which they will be subject to customs controls relating to the completion of exit formalities, and appropriate risk-based controls.;

— point 14 shall be replaced by the following:

(14) "Customs controls" means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts.;

— The following points shall be added:

(25) "Risk" means the likelihood of an event occurring, in connection with the entry, exit, transit, transfer and end-use of goods moved between

the customs territory of the Community and third countries and the presence of goods that do not have Community status, which

— prevents the correct application of Community or national measures, or

— compromises the financial interests of the Community and its Member States, or

— poses a threat to the Community's security and safety, to public health, to the environment or to consumers.

(26) "Risk management" means the systematic identification of risk and implementation of all measures necessary for limiting exposure to risk. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies.;

2. the following Section and Article shall be inserted:

Section 1A

Authorised economic operators

Article 5a

1 Customs authorities, if necessary following consultation with other competent authorities, shall grant, subject to the criteria provided for in paragraph 2, the status of "authorised economic operator" to any economic operator established in the customs territory of the Community.

An authorised economic operator shall benefit from facilitations with regard to customs controls relating to security and safety and/or from simplifications provided for under the customs rules.

The status of authorised economic operator shall, subject to the rules and conditions laid down in paragraph 2, be recognised by the customs authorities in all Member States, without prejudice to customs controls. Customs authorities shall, on the basis of the recognition of the status of authorised economic operator and provided that the requirements relating to a specific type of simplification provided for in Community customs legislation are fulfilled, authorise the operator to benefit from that simplification.

2 The criteria for granting the status of authorised economic operator shall include:

— an appropriate record of compliance with customs requirements,

— a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls,

— where appropriate, proven financial solvency, and

— where applicable, appropriate security and safety standards.

The committee procedure shall be used to determine the rules:

— for granting the status of authorised economic operator,

— for granting authorisations for the use of simplifications,

— for establishing which customs authority is competent to grant such status and authorisations,
— for the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management,
— for consultation with, and provision of information to, other customs authorities;

and the conditions under which:
— an authorisation may be limited to one or more Member States,
— the status of authorised economic operator may be suspended or withdrawn, and
— the requirement of being established in the Community may be waived for specific categories of authorised economic operator, taking into account, in particular, international agreements.;

3. Article 13 shall be replaced by the following:

Article 13

1 Customs authorities may, in accordance with the conditions laid down by the provisions in force, carry out all the controls they deem necessary to ensure that customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status are correctly applied. Customs controls for the purpose of the correct application of Community legislation may be carried out in a third country where an international agreement provides for this.

2 Customs controls, other than spot-checks, shall be based on risk analysis using automated data processing techniques, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Community and, where available, international level.

The committee procedure shall be used for determining a common risk management framework, and for establishing common criteria and priority control areas.

Member States, in cooperation with the Commission, shall establish a computer system for the implementation of risk management.

3 Where controls are performed by authorities other than the customs authorities, such controls shall be performed in close coordination with the customs authorities, wherever possible at the same time and place.

4 In the context of the controls provided for in this Article, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, between each other and to the customs authorities of the Member States and to the Commission where this is required for the purposes of minimising risk.

Communication of confidential data to the customs authorities and other bodies (e.g. security agencies) of third countries shall be allowed only in the framework of an international agreement and provided that the data protection provisions in