

2003/0167 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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 Commission⁵⁴,

Having regard to the opinion of the European Economic and Social Committee⁵⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁵⁶, as last amended by Regulation (EC) No 2700/2000⁵⁷ lays down the rules for the customs treatment of goods that are imported or to be exported.
- (2) It should be specified under which conditions 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.
- (3) It is necessary to establish an equal level of customs controls in the Community and to ensure a harmonised application of customs controls by the Member States. It should be reminded that Member States are mainly responsible for these controls. Such controls should be based on commonly agreed standards and risk criteria for the selection of goods and economic operators in order to minimise the occurrence of risks to the Community and its citizens. Member States and the Commission should therefore introduce an EU 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 operators and ensure a harmonised application of such criteria and requirements. The establishment of a risk management framework

⁵⁴ OJ C [...] [...], p. [...]

⁵⁵ OJ C [...] [...], p. [...]

⁵⁶ OJ L 302, 19.10.1992, p. 1.

⁵⁷ OJ L 311, 12.12.2000, p. 1.

common to all Member States should not prevent them from controlling goods by spot-checks.

Risk-related information on import and export goods should be shared between the competent administrations of the Member States and the Commission. The information to be exchanged will be general control information related to goods rather than operator or consignment specific information. 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 provides for this.

- (5) 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 entering into or leaving the Community customs territory, except for goods passing through by air or ship without a stop within this territory. Such information should be available before the goods enter into or leave the Community customs territory. Different timeframes and rules can be set according to types of goods, types of transport and types of economic operator. This requirement must also be introduced with regard to goods brought into or out of a free zone in order to avoid security loopholes.

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

HAVE ADOPTED THIS REGULATION

Article 1

Regulation (EEC) No. 2913/92 shall be amended as follows:

- 1 Article 4 No 14 is replaced by the following:

"(14) 'Customs controls' mean specific acts performed by the customs authorities or co-ordinated with them, in order to ensure the correct application of customs legislation and other legislation relating to the import or export of goods, such as examining goods, verifying the existence and authenticity of 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 with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed."
- 2 In Article 4 the following subparagraphs shall be added:

"(25) 'Risk' means: the likelihood of an event that may occur in the international movement and trade of goods threatening the Community's security and safety, posing a risk to public health, environment and consumers, including prevention of the correct application of Community or national measures concerning the goods entering into or exiting from the Community.

(26) 'Risk management' means: the systematic identification and implementation of all measures necessary for limiting exposure of risks. 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.

- (27) 'Authorised economic operator means an actor in the trade supply chain authorised by the customs authorities who meets the criteria specified by the procedure of the Committee, including having an appropriate record of compliance with customs requirements, a satisfactory system of managing his commercial records and appropriate physical security measures. In this way, the authorised operator offers every guarantee necessary for the proper and secure conduct of operations and can thus benefit from certain simplifications, provided specific conditions are met. The status of the authorised economic operator will be granted for a certain period and will be periodically reviewed.'

3. In Article 13 the following subparagraph shall be added:

"Customs controls should be based on risk analysis, 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 and, where available, Community or international level. A common risk management framework shall be determined according to the Committee procedure, laying down the organisational framework and the procedure for establishing common criteria and priority control areas. Member States and the Commission shall set up co-ordinated and inter-linked automated support systems for the implementation of risk management. 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."

4. Article 15 shall be replaced by the following:

"Article 15

1. All information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged or authorised to do so pursuant to the provisions in force, particularly in respect of data protection, or in connection with legal proceedings.
2. Customs, fiscal and other competent authorities may communicate data received in the context of importation or exportation of goods between themselves, between Member States, and the Commission where this is required for the purposes of the procedure concerned, in order to protect the security of citizens and businesses, or to detect or prevent irregularities. Communication of confidential data to administrations of third countries is only admitted in the framework of an international agreement."

- 5 Under Chapter I (Entry of goods into the customs territory) the following Articles shall be inserted:

"Article 36a

1. Before goods are brought into the customs territory of the Community, a summary declaration must be lodged at the customs office of entry. The lodging of a notification and access to the summary declaration data in the operator's electronic system may replace the lodging of a summary declaration, notwithstanding the legal obligation of the declarant to lodge a customs declaration. Where another customs office than the customs office of entry receives such a declaration, it communicates it without delay and electronically to the customs office of entry.
2. Where a customs declaration is required following the entry of the goods into the customs territory of the Community, the electronic customs declaration replaces the summary declaration, provided it is lodged within the timeframe stipulated for the summary declaration. Where an incomplete or simplified declaration is used, it must contain the necessary data.
3. The normal deadline for lodging a summary declaration is 24 hours before the goods are presented to customs, except where transport time is shorter or where an international agreement provides for a different timeframe. The procedure of the Committee shall be used to determine
 - a common data set and format of the summary declaration, using wherever possible international standards,
 - special deadlines for certain types of traffic and economic operators, and
 - the conditions under which such requirement may be waived, notably with regard to authorised economic operators.
4. The goods cannot be released before the summary declaration or the customs declaration has been presented.

Article 36b

1. The summary declaration shall be made in electronic form according to the specification determined under the procedure of the Committee. Commercial, port or transport information may be used, provided it contains the required data. Customs authorities may accept paper-based summary declarations in exceptional circumstances and only within a period of two years after the entry into force of the present regulation.
2. The summary declaration shall be lodged by
 - (a) the person who brings the goods into the customs territory of the Community or by any person who assumes responsibility for carriage of the goods following such entry; or
 - (b) the person in whose name the persons referred to in subparagraph (a) act; or
 - (c) a representative within the meaning of Article 5 of one of the persons referred to in subparagraphs (a) and (b)."

6. Title III. of Chapter 3 shall be changed to “Unloading of goods presented to customs”.

7. Article 40 shall be replaced by the following:

“Article 40

Goods entering into the customs territory of the Community shall be presented to customs by the person who brought them into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry, with the exception of means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory. Authorised economic operators can be relieved from the requirement to present goods to customs, provided they have lodged a summary declaration or a customs declaration in accordance with Articles 36a and 36b.”

8. Articles 43 to 45 shall be deleted

9. Article 170 (2) shall be replaced by the following:

“2 Goods shall be presented to the customs authorities and undergo the prescribed customs formalities where:

- (a) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse; however, where the customs procedure in question permits exemption from the obligation to present goods, such presentation shall not be required;
- (b) they have been placed in a free zone or free warehouse on the basis of a decision to grant repayment or remission of import duties;
- (c) they qualify for the measures referred to in Article 166 (b);
- (d) they enter into a free zone or free warehouse directly from outside the Community customs territory, except where an operator has been authorised not to present the goods and has lodged a summary declaration or a customs declaration in accordance with Articles 36a and 36b.”

10. Article 176 (2) shall be replaced by the following:

“2 Where goods are transhipped within a free zone, the documents relating to the operation shall be kept at the disposal of the customs authorities. The short-term storage of goods in connection with such transhipment shall be considered to be an integral part of the operation.

For goods brought into a free zone directly from outside the Community customs territory or out of a free zone directly leaving the Community customs territory, a summary declaration must be lodged in accordance with Articles 36a and 36b or 182a and 182b.”

Article 181 shall be replaced by the following:

“Article 181

The customs authorities shall satisfy themselves that the rules governing exportation or re-exportation as well as the provisions of Title V are respected where goods are exported or re-exported from a free zone or free warehouse.”

12. In Article 182 (3) first sentence the words "re-exportation or" are deleted.
13. Under Title V (Goods leaving the customs territory of the Community) the following Articles shall be inserted:

“Article 182a

- 1 Before goods are brought out of the customs territory of the Community, a summary declaration must be lodged at the customs office of export 24 hours before the goods are presented at the customs office of export, except where an international agreement provides for a different timeframe. The lodging of a notification and access to the summary declaration data on the economic operator’s electronic system may replace the lodging of a summary declaration, notwithstanding the legal obligation of the declarant to lodge a customs declaration.
- 2 Where a customs declaration is required for the export or re-export of goods, the electronic customs declaration replaces the summary declaration, provided it is lodged within the timeframe stipulated for the summary declaration. Where an incomplete or simplified declaration is used, it must contain the necessary data.
- 3 The procedure of the Committee shall be used to determine
 - a common data set and format of the summary declaration, using wherever possible international standards,
 - special deadlines for certain types of traffic and authorised economic operators, and
 - the conditions under which it must be lodged, and the conditions under which such requirement may be waived, notably with regard to authorised economic operators.

Article 182b

1. The summary declaration shall be made in electronic form according to the specifications determined under the procedure of the Committee. Customs authorities may accept paper based summary declarations in exceptional circumstances and only within a period of two years after the entry into force of the present regulation. Commercial port or transport data including access to the operator’s electronic system may be used provided it contains the required data.

2. Where no customs declaration is made, a summary declaration shall be lodged by:
- (a) the person who brings the goods out of the customs territory of the Community or by any person who assumes responsibility for carriage of the goods; or
 - (b) the person in whose name the persons referred to in subparagraph (a) act; or
 - (c) a representative of one of the persons referred to in subparagraphs (a) and (b)."

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*. Electronic declaration and automated support systems for the implementation of risk management, as stipulated in Articles 13, 36a, 36b, 182a and 182b, as well as implementing provisions to the present regulation must be in place two years after the entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President