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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 952/2013 laying down the Union Customs Code, as regards goods that have temporarily left the customs territory of the Union by sea or air

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC)¹ aims at facilitating legitimate trade while ensuring appropriate customs supervision and the fight against fraud.

The UCC entered into force on 30 October 2013, but it applies in its entirety from 1 May 2016.

This proposal aims at modifying Article 136 UCC in order to ensure the effective application of other UCC provisions, notably those on customs supervision. This amendment should enter into force as soon as possible so as to contribute to effective customs supervision.

With a view to facilitating trade flows, Article 136 UCC states that certain provisions (in particular those governing the obligations to lodge the entry summary declaration, to notify the arrival of a sea-going vessel or an aircraft, to convey and present the goods to customs upon unloading or transshipment and to wait authorisation before unloading or transshipping the goods, and those governing temporary storage) do not apply to goods that have temporarily left the Union customs territory while moving by direct route between two points of that territory by sea or air without a stop outside the Union. However, the disapplication of those provisions may put at risk the effective customs supervision of these goods.

Article 136 UCC does not eliminate the requirement laid down in Article 134 UCC for goods brought into the customs territory of the Union to be subject to customs supervision and, where appropriate, to customs controls. However, the current text of Article 136 has the consequence that there is no clear legal basis to require presentation of these goods to the customs authorities. In the absence of such presentation, the supervision by the customs authorities of non-Union goods and of Union goods whose status must be proven may become more difficult.

The customs authorities in these subsequent ports or airports must have the opportunity to ensure the complete and correct levying of import duty and other charges, or the correct application of non-fiscal measures (e.g. veterinary or phytosanitary controls) as well as identifying risks on goods arriving in their ports or airports.

In order to ensure the proper application of other UCC provisions, notably those on customs supervision, it is therefore indispensable to propose a modification to the scope of Article 136 UCC, distinguishing between non-Union and Union goods, as follows:

- (1) First, the only provisions not applying when non-Union goods re-enter the Union customs territory after having temporarily left it by direct sea or air route, should be:
 - (1) The rules governing the obligation to lodge the entry summary declaration (Articles 127 to 130 UCC) and
 - (2) The rules governing the obligation to notify the arrival of a sea-going vessel or aircraft to the customs office of first entry to the Union customs territory (Article 133 UCC).

¹ OJ L 269, 10.10.2013, p. 1.

- (3) By contrast, the provisions governing the obligation to convey the goods to a certain place, to present them to customs upon unloading or transshipment, to wait for authorisation before unloading or transshipping, and the provisions on temporary storage should apply in these situations, thereby allowing appropriate customs supervision.
- (2) Second, the situation should be similar for Union goods whose status needs to be proven pursuant to Article 153(2) UCC, to the extent that the customs authorities must be able to check the proof of their Union status.
- (3) Third, the rules not applying to Union goods that have retained their status by virtue of Article 155(2) UCC can in addition include the rules governing the obligation to present the goods to customs upon unloading or transshipment, and the obligation to wait for authorisation before unloading or transshipping the goods (139 to 140 UCC). This is due to the fact that, even if the goods have temporarily left the Union customs territory, their status has not been altered and does not need to be proven.
- (4) Finally, certain references should be deleted from Article 136 UCC, as follows:
 - (1) The reference to Articles 135(1) and 137 UCC should be deleted from because the goods should be conveyed to certain places designated by the customs authorities in any event;
 - (2) The reference to Article 141 UCC should be deleted because Article 141(1) should continue to be applicable to goods moved under the transit procedure when they re-enter the customs Union.
 - (3) The reference to Articles 144 to 149 UCC should be deleted because the provisions on temporary storage do not apply to Union goods in any event and their application for non-Union goods was excluded by mistake.

- **Consistency with other Union policies**

The proposal aims at ensuring the proper application of Regulation (EU) No 952/2013, which is fully in line with existing policies and objectives relevant to the trade of goods brought into and out of, from and to the customs territory of the Union

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 207 of the Treaty on the Functioning of the European Union.

- **Subsidiarity**

The proposal falls under the exclusive competence of the Union according to Article 3(1)(e) of the Treaty on the Functioning of the European Union.

- **Proportionality**

The proposal does not entail any new policy developments compared to the legislative act it intends to amend; it merely modifies a single provision in order to ensure the proper application of other provisions of the same Regulation. As Regulation (EC) No 952/2013 is a

legal act of the EU, it can only be amended by way of an equivalent legal act. Member States cannot act individually.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Consultation of interested parties

This amendment does not alter the substance of Regulation (EU) No 952/2013 so the consultation of interested parties previously held before the adoption of that Regulation is still relevant.

The relevant amendment has also been discussed with the Member States and with trade representatives in several joint meetings of the Customs Expert Group and the Trade Contact Group, where consensus was reached on the substance of the proposed version.

Impact assessment

There is no need for an additional Impact Assessment. This proposal merely modifies a single provision in order to make it coherent with other provisions of Regulation (EU) No 952/2013, which is a recast of Regulation (EC) N° 450/2008 and for which the Commission conducted an impact assessment.

4. BUDGETARY IMPLICATIONS

The amendment proposed should not have any direct budgetary implications but will facilitate collection of own resources.

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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 Article 207 thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) With a view to facilitating trade flows, Article 136 of Regulation (EU) No 952/2013 of the European Parliament and of the Council² excludes the application of certain provisions of that Regulation to goods that have temporarily left the customs territory of the Union while moving between two Union ports or airports without stopping outside the Union. Those provisions are the rules governing the obligation to lodge the entry summary declaration, the rules governing the obligation to notify the arrival of a sea-going vessel or an aircraft, the rules governing the obligation to convey the goods to certain places and to present them to the customs authorities at the point in which they are unloaded or transhipped, and the rules governing temporary storage.
- (2) As a result, there is no legal basis for requiring the presentation of the goods that are unloaded or transhipped at the point where the goods re-enter the customs territory of the Union after having temporarily left it. Without presentation, it may be more difficult for customs authorities to ensure the supervision of those goods, and there is a risk both, that import duty and other charges are not correctly levied, and that non-fiscal measures such as veterinary and phytosanitary controls are not properly applied.
- (3) Article 136 of Regulation (EU) No 952/2013 should therefore be amended in order to take into account the different situations of non-Union and Union goods.
- (4) In order to ensure effective customs supervision of non-Union goods, the provisions governing the obligation to convey the goods to certain places, to present them to customs upon unloading or transshipment, to wait for authorisation before unloading or transshipping, as well as the provisions governing temporary storage, should continue to apply to non-Union goods. Article 136 should therefore provide that only the rules governing the obligation to lodge the entry summary declaration and the obligation to notify the arrival of a sea-going vessel or an aircraft are excluded with regard to non-Union goods.

² Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (5) In order to ensure effective supervision of Union goods, Article 136 should distinguish between the situation of Union goods whose status needs to be proven pursuant to Article 153(2) of Regulation (EU) No 952/2013 and Union goods that have retained their status by virtue of Article 155(2) of that Regulation.
- (6) As regards Union goods whose status needs to be proven pursuant to Article 153(2) of Regulation (EU) No 952/2013, only application of the rules governing the obligation to lodge the entry summary declaration and the obligation to notify the arrival of a sea-going vessel or an aircraft should be excluded, thereby allowing appropriate customs supervision.
- (7) The rules laid down in Article 139 of Regulation (EU) No 952/2013 governing the obligation to present the goods to customs upon unloading or transshipment and the obligation to wait for authorisation before unloading or transshipping the goods laid down in Article 140 of that Regulation should also not apply to Union goods that have retained their status by virtue of Article 155(2) of that Regulation having regard to the fact that, even if the goods have temporarily left the Union customs territory, their status has not been altered and does not need to be proven.
- (8) The references in Article 136 of Regulation (EU) No 952/2013 to Article 135(1) and Article 137 of that Regulation should be deleted in order to oblige the person bringing goods into the Union customs territory to convey them to the place designated by the customs authorities, so that these have the possibility of checking whether the goods are Union or non-Union goods if necessary.
- (9) The reference in Article 136 of Regulation (EU) No 952/2013 to Article 141 of that Regulation should be deleted so that it is made clear that Article 141(1) which excludes the application of certain provisions to goods moved under the transit procedure, also applies when the goods re-enter the Union customs territory after having temporarily left it by direct sea or air route.
- (10) The reference in Article 136 of Regulation (EU) No 952/2013 to Articles 144 to 149 of that Regulation on temporary storage should also be deleted. Those rules do not apply to Union goods in any event and their exclusion for non-Union goods is a mistake that should be corrected.
- (11) This Regulation should enter into force as soon as possible in order to ensure an effective supervision of goods without further delay,

HAVE ADOPTED THIS REGULATION:

Article 1

In Regulation (EU) No 952/2013, Article 136 is replaced by the following:

"Article 136

Goods that have temporarily left the customs territory of the Union by sea or air

1. Articles 127 to 130 and Article 133 shall not apply when non-Union goods are brought into the customs territory of the Union after having temporarily left that territory by sea or by air and having been carried by direct route without a stop outside the customs territory of the Union.

2. Articles 127 to 130 and Article 133 shall not apply when Union goods whose customs status as Union goods needs to be proven pursuant to Article 153(2) are brought into the customs territory of the Union after having temporarily left that territory by sea or by air and having been carried by direct route without a stop outside the customs territory of the Union.
3. Articles 127 to 130 and Articles 133, 139 and 140 shall not apply when Union goods, which move without alteration of their customs status in accordance with Article 155(2), are brought into the customs territory of the Union after having temporarily left that territory by sea or air and having been carried by direct route without a stop outside the customs territory of the Union. "

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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