

Regulation (EC) No 450/2008 of the European Parliament and
of the Council of 23 April 2008 laying down the Community
Customs Code (Modernised Customs Code) (repealed)

TITLE I

GENERAL PROVISIONS

CHAPTER 2

Rights and obligations of persons with regard to customs legislation

Section 1

Provision of information

Article 5

Exchange and storage of data

1 All exchanges of data, accompanying documents, decisions and notifications between customs authorities and between economic operators and customs authorities required under the customs legislation, and the storage of such data as required under the customs legislation, shall be made using electronic data-processing techniques.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down exceptions to the first subparagraph, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Those measures shall define the cases in which and the conditions under which paper or other transactions may be used in place of electronic exchanges of data, taking the following, in particular, into account:

- a the possibility of temporary failure of the customs authorities' computerised systems;
- b the possibility of temporary failure of the economic operator's computerised systems;
- c international conventions and agreements which provide for the use of paper documents;
- d travellers without direct access to the computerised systems and with no means of providing electronic information;
- e practical requirements for declarations to be made orally or by any other act.

2 Except where these are otherwise specifically provided for in the customs legislation, the Commission shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures laying down the following:

- a the messages to be exchanged between customs offices, as required for the application of the customs legislation;
- b a common data set and format of the messages to be exchanged under the customs legislation.

The data referred to in point (b) of the first subparagraph shall contain the particulars necessary for risk analysis and the proper application of customs controls, using, where appropriate, international standards and commercial practices.

Article 6

Data protection

1 All information acquired by the customs authorities in the course of performing their duties which is by its nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. Except as provided for under Article 26(2), such information shall not be disclosed by the competent authorities without the express permission of the person or authority that provided it.

Such information may, however, be disclosed without permission where the customs 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 Communication of confidential data to the customs authorities and other competent authorities of countries or territories outside the customs territory of the Community shall be permitted only in the framework of an international agreement ensuring an adequate level of data protection.

3 The disclosure or communication of information shall take place in full compliance with data-protection provisions in force.

Article 7

Exchange of additional information between customs authorities and economic operators

1 Customs authorities and economic operators may exchange any information not specifically required under the customs legislation, in particular for the purpose of mutual cooperation in the identification and counteraction of risk. That exchange may take place under a written agreement and may include access to the computer systems of economic operators by the customs authorities.

2 Any information provided by one party to the other in the course of the cooperation referred to in paragraph 1 shall be confidential unless both parties agree otherwise.

Article 8

Provision of information by the customs authorities

1 Any person may request information concerning the application of customs legislation from the customs authorities. Such a request may be refused where it does not relate to an activity pertaining to international trade in goods that is actually envisaged.

2 Customs authorities shall maintain a regular dialogue with economic operators and other authorities involved in international trade in goods. They shall promote transparency by making the customs legislation, general administrative rulings and application forms freely available, wherever practical without charge, and through the Internet.

Article 9

Provision of information to the customs authorities

1 Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.

2 The lodging of a summary declaration or customs declaration, or notification, or the submission of an application for an authorisation or any other decision, shall render the person concerned responsible for the following:

- a the accuracy and completeness of the information given in the declaration, notification or application;
- b the authenticity of any documents lodged or made available;
- c where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations.

The first subparagraph shall apply also to the provision of any information in any other form required by or given to the customs authorities.

Where the declaration or notification is lodged, the application is submitted or information is provided by a customs representative of the person concerned, the customs representative shall also be bound by the obligations set out in the first subparagraph.

Article 10

Electronic systems

1 Member States shall cooperate with the Commission with a view to developing, maintaining and employing electronic systems for the exchange of information between customs offices and for the common registration and maintenance of records relating, in particular, to the following:

- a economic operators directly or indirectly involved in the accomplishment of customs formalities;
- b applications and authorisations concerning a customs procedure or the status of authorised economic operator;
- c applications and special decisions granted in accordance with Article 20;
- d common risk management, as referred to in Article 25.

2 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the following:

- a the standard form and content of the data to be registered;
- b maintenance of those data, by the customs authorities of Members States;
- c the rules for access to those data by:
 - (i) economic operators,
 - (ii) other competent authorities,

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Section 2

Customs representation

Article 11

Customs representative

1 Any person may appoint a customs representative.

Such representation may be either direct, in which case the customs representative shall act in the name of and on behalf of another person, or indirect, in which case the customs representative shall act in his own name but on behalf of another person.

A customs representative shall be established within the customs territory of the Community.

2 Member States may define, in accordance with Community law, the conditions under which a customs representative may provide services in the Member State where he is established. However, without prejudice to the application of less stringent criteria by the Member State concerned, a customs representative who complies with the criteria laid down in Article 14(a) to (d) shall be entitled to provide such services in a Member State other than the one where he is established.

3 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down in particular, the following:

- a the conditions under which the requirement referred to in the third subparagraph of paragraph 1 may be waived;
- b the conditions under which the entitlement referred to in paragraph 2 may be conferred and proved;
- c any further measures for the implementation of this Article,

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Article 12

Empowerment

1 When dealing with the customs authorities, a customs representative shall state that he is acting on behalf of the person represented and specify whether the representation is direct or indirect.

A person who fails to state that he is acting as a customs representative or who states that he is acting as a customs representative without being empowered to do so shall be deemed to be acting in his own name and on his own behalf.

2 The customs authorities may require any person stating that he is acting as a customs representative to produce evidence of his empowerment by the person represented.

The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down derogations from the first subparagraph, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Section 3

Authorised economic operator

Article 13

Application and authorisation

1 An economic operator who is established in the customs territory of the Community and who meets the conditions set out in Articles 14 and 15 may request the status of authorised economic operator.

The customs authorities shall, if necessary following consultation with other competent authorities, grant that status, which shall be subject to monitoring.

2 The status of authorised economic operator shall consist in two types of authorisations: that of a ‘customs simplification’ authorised economic operator and that of a ‘security and safety’ authorised economic operator.

The first type of authorisation shall enable economic operators to benefit from certain simplifications in accordance with the customs legislation. Under the second type of authorisation the holder thereof shall be entitled to facilitations relating to security and safety.

Both types of authorisations may be held at the same time.

3 The status of authorised economic operator shall, subject to Articles 14 and 15, be recognised by the customs authorities in all Member States, without prejudice to customs controls.

4 Customs authorities shall, on the basis of the recognition of the status of authorised economic operator and provided that the requirements related to a specific type of simplification provided for in the customs legislation are fulfilled, authorise the operator to benefit from that simplification.

5 The status of authorised economic operator may be suspended or revoked in accordance with the conditions laid down pursuant to Article 15(1)(g).

6 The authorised economic operator shall notify the customs authorities of all factors arising after that status was granted which may influence its continuation or content.

Article 14

Granting of status

The criteria for the granting of the status of authorised economic operator shall be the following:

- (a) a record of compliance with customs and tax requirements;

- (b) a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
- (c) proven solvency;
- (d) pursuant to Article 13(2), in cases where an authorised economic operator wishes to take advantage of the simplifications provided for in accordance with the customs legislation, practical standards of competence or professional qualifications directly related to the activity carried out;
- (e) pursuant to Article 13(2), in cases where an authorised economic operator wishes to take advantage of facilitations with regard to customs controls relating to security and safety, appropriate security and safety standards.

Article 15

Implementing measures

1 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down rules in respect of the following:

- a the granting of the status of authorised economic operator;
- b the cases in which review of the status of authorised economic operator is to be carried out;
- c the granting of authorisations for the use of simplifications by authorised economic operators;
- d identification of the customs authority competent for the granting of such status and authorisations;
- e the type and extent of facilitations that may be granted to authorised economic operators in respect of customs controls relating to security and safety;
- f consultation with and provision of information to other customs authorities;
- g the conditions under which the status of authorised economic operator may be suspended or revoked;
- h the conditions under which the requirement of being established in the customs territory of the Community may be waived for specific categories of authorised economic operators, taking into account, in particular, international agreements,

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

2 Those measures shall take account of the following:

- a the rules adopted pursuant to Article 25(3);
- b professional involvement in activities covered by customs legislation;
- c practical standards of competence or professional qualifications directly related to the activity carried out;
- d the economic operator as the holder of any internationally recognised certificate issued on the basis of relevant international conventions.

Section 4

Decisions relating to the application of customs legislation

Article 16

General provisions

1 Where a person requests that the customs authorities take a decision relating to the application of customs legislation, that person shall supply all the information required by those authorities in order for them to be able to take that decision.

A decision may also be requested by, and taken with regard to, several persons, in accordance with the conditions laid down in the customs legislation.

2 Except where otherwise provided for in the customs legislation, a decision as referred to in paragraph 1 shall be taken, and the applicant notified, without delay, and at the latest within four months of the date on which all the information required by the customs authorities in order for them to be able to take that decision is received by those authorities.

However, where the customs authorities are unable to comply with those time limits, they shall inform the applicant of that fact before the expiry of those time limits, stating the reasons and indicating the further period of time which they consider necessary in order to give a decision on the request.

3 Except where otherwise specified in the decision or in the customs legislation, the decision shall take effect from the date on which the applicant receives the decision, or is deemed to have received it. Except in the cases provided for in Article 24(2), decisions adopted shall be enforceable by the customs authorities from that date.

4 Before taking a decision which would adversely affect the person or persons to whom it is addressed, the customs authorities shall communicate the grounds on which they intend to base their decision to the person or persons concerned, who shall be given the opportunity to express their point of view within a period prescribed from the date on which the communication was made.

Following the expiry of that period, the person concerned shall be notified, in the appropriate form, of the decision, which shall set out the grounds on which it is based. The decision shall refer to the right of appeal provided for in Article 23.

5 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the following:

- a the cases in which and conditions under which the first subparagraph of paragraph 4 shall not apply;
- b the period referred to in the first subparagraph of paragraph 4,

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

6 Without prejudice to provisions laid down in other fields which specify the cases in which, and the conditions under which, decisions are invalid or become null and void, the customs authorities who issued a decision may at any time annul, amend or revoke it where it does not conform with the customs legislation.

7 Except when a customs authority acts as a judicial authority, the provisions of paragraphs 3, 4 and 6 of this Article and of Articles 17, 18 and 19 shall also apply to decisions

taken by the customs authorities without prior request from the person concerned and, in particular, to the notification of a customs debt as provided for in Article 67(3).

Article 17

Community-wide validity of decisions

Except where otherwise requested or specified, decisions taken by the customs authorities which are based upon or related to the application of customs legislation shall be valid throughout the customs territory of the Community.

Article 18

Annulment of favourable decisions

1 The customs authorities shall annul a decision favourable to the person to whom it is addressed if all the following conditions are satisfied:

- a the decision was issued on the basis of incorrect or incomplete information;
- b the applicant knew or ought reasonably to have known that the information was incorrect or incomplete;
- c if the information had been correct and complete, the decision would have been different.

2 The person to whom the decision was addressed shall be notified of its annulment.

3 Annulment shall take effect from the date on which the initial decision took effect, unless otherwise specified in the decision in accordance with the customs legislation.

4 The Commission may, in accordance with the management procedure referred to in Article 184(3), adopt measures for the implementation of this Article, in particular in respect of decisions addressed to several persons.

Article 19

Revocation and amendment of favourable decisions

1 A favourable decision shall be revoked or amended where, in cases other than those referred to in Article 18, one or more of the conditions laid down for its issue were not or are no longer fulfilled.

2 Except where otherwise specified in the customs legislation, a favourable decision addressed to several persons may be revoked only in respect of a person who fails to fulfil an obligation imposed under that decision.

3 The person to whom the decision was addressed shall be notified of its revocation or amendment.

4 Article 16(3) shall apply to the revocation or amendment of the decision.

However, in exceptional cases where the legitimate interests of the person to whom the decision was addressed so require, the customs authorities may defer the date on which revocation or amendment takes effect.

5 The Commission may, in accordance with the management procedure referred to in Article 184(3), adopt measures for the implementation of this Article, in particular in respect of decisions addressed to several persons.

Article 20

Decisions relating to binding information

1 The customs authorities shall, on formal request, issue decisions relating to binding tariff information, hereinafter referred to as ‘BTI decisions’, or decisions relating to binding origin information, hereinafter referred to as ‘BOI decisions’.

Such a request shall be refused in any of the following circumstances:

- a where the application is made, or has already been made, at the same or another customs office, by or on behalf of the holder of a decision in respect of the same goods and, for BOI decisions, under the same circumstances determining the acquisition of origin;
- b where the application does not relate to any intended use of the BTI or BOI decision or any intended use of a customs procedure.

2 BTI or BOI decisions shall be binding only in respect of the tariff classification or determination of the origin of goods.

Those decisions shall be binding on the customs authorities, as against the holder of the decision, only in respect of goods for which customs formalities are completed after the date on which the decision takes effect.

The decisions shall be binding on the holder of the decision, as against the customs authorities, only with effect from the date on which he receives, or is deemed to have received, notification of the decision.

3 BTI or BOI decisions shall be valid for a period of three years from the date on which the decision takes effect.

4 For the application of a BTI or BOI decision in the context of a particular customs procedure, the holder of the decision must be able to prove that:

- a in the case of a BTI decision, the goods declared correspond in every respect to those described in the decision;
- b in the case of a BOI decision, the goods in question and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the decision.

5 By way of derogation from Article 16(6) and Article 18, BTI or BOI decisions shall be annulled where they are based on inaccurate or incomplete information from the applicants.

6 BTI or BOI decisions shall be revoked in accordance with Article 16(6) and Article 19.

They may not be amended.

7 The Commission shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of paragraphs 1 to 5 of this Article.

8 Without prejudice to Article 19, the measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down

- a the conditions under which, and the moment when, the BTI or BOI decision ceases to be valid;

- b the conditions under which, and the period of time for which, a decision as referred to in point (a) may still be used in respect of binding contracts based upon the decision and concluded before the expiry of its validity;
- c the conditions under which the Commission may issue decisions requesting Member States to revoke or amend a decision relating to binding information and giving different binding information compared with other decisions on the same subject,

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

9 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down the conditions under which other decisions relating to binding information are to be issued shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).

Section 5

Penalties

Article 21

Application of penalties

1 Each Member State shall provide for penalties for failure to comply with Community customs legislation. Such penalties shall be effective, proportionate and dissuasive.

2 Where administrative penalties are applied, they may take, inter alia, one of the following forms, or both:

- a a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty;
- b the revocation, suspension or amendment of any authorisation held by the person concerned.

3 Member States shall notify the Commission, within six months from the date of application of this Article, as determined in accordance with Article 188(2), of the national provisions in force as envisaged in paragraph 1 and shall notify it without delay of any subsequent amendment affecting them.

Section 6

Appeals

Article 22

Decisions taken by a judicial authority

Articles 23 and 24 shall not apply to appeals lodged with a view to the annulment, revocation or amendment of a decision relating to the application of customs legislation taken by a judicial authority, or by customs authorities acting as judicial authorities.

Article 23

Right of appeal

1 Any person shall have the right to appeal against any decision taken by the customs authorities relating to the application of customs legislation which concerns him directly and individually.

Any person who has applied to the customs authorities for a decision and has not obtained a decision on that request within the time limits referred to in Article 16(2) shall also be entitled to exercise the right of appeal.

2 The right of appeal may be exercised in at least two steps:

- a initially, before the customs authorities or a judicial authority or other body designated for that purpose by the Member States;
- b subsequently, before a higher independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.

3 The appeal must be lodged in the Member State where the decision has been taken or applied for.

4 Member States shall ensure that the appeals procedure enables the prompt confirmation or correction of decisions taken by the customs authorities.

Article 24

Suspension of implementation

1 The submission of an appeal shall not cause implementation of the disputed decision to be suspended.

2 The customs authorities shall, however, suspend implementation of such a decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

3 In the cases referred to in paragraph 2, where the disputed decision has the effect of causing import duties or export duties to be payable, suspension of that decision shall be conditional upon the provision of a guarantee, unless it is established, on the basis of a documented assessment, that such a guarantee would be likely to cause the debtor serious economic or social difficulties.

The Commission may, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of the first subparagraph of this paragraph.

Section 7

Control of goods

Article 25

Customs controls

1 The customs authorities may carry out all the customs controls they deem necessary.

Customs controls may in particular consist of examining goods, taking samples, verifying declaration data and the existence and authenticity of documents, examining the accounts of economic operators and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official enquiries and other similar acts.

2 Customs controls, other than random checks, shall primarily be based on risk analysis using electronic data-processing techniques, with the purpose of identifying and evaluating the risks and developing the necessary counter-measures, on the basis of criteria developed at national, Community and, where available, international level.

Member States, in cooperation with the Commission, shall develop, maintain and employ a common risk management framework, based upon the exchange of risk information and analysis between customs administrations and establishing, inter alia, common risk evaluation criteria, control measures and priority control areas.

Controls based upon such information and criteria shall be carried out without prejudice to other controls carried out in accordance with paragraphs 1 and 2 or with other provisions in force.

3 The Commission, without prejudice to paragraph 2 of this Article, shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt implementing measures laying down the following:

- a common risk management framework;
- b common criteria and priority control areas;
- c the risk information and analysis to be exchanged between customs administrations.

Article 26

Cooperation between authorities

1 Where, in respect of the same goods, controls other than customs controls are to be performed by competent authorities other than the customs authorities, customs authorities shall, in close cooperation with those other authorities, endeavour to have those controls performed, wherever possible, at the same time and place as customs controls (one-stop-shop), with customs authorities having the coordinating role in achieving this.

2 In the framework of the controls referred to in this Section, customs and other competent authorities may, where necessary for the purposes of minimising risk and combating fraud, exchange with each other and with the Commission data received in the context of the entry, exit, transit, transfer, storage and end-use of goods, including postal traffic, moved between the customs territory of the Community and other territories, the presence and movement within the customs territory of non-Community goods and goods placed under the

end-use procedure, and the results of any control. Customs authorities and the Commission may also exchange such data with each other for the purpose of ensuring a uniform application of Community customs legislation.

Article 27

Post-release control

The customs authorities may, after releasing the goods and in order to ascertain the accuracy of the particulars contained in the summary or customs declaration, inspect any documents and data relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods. Those authorities may also examine such goods and/or take samples where it is still possible for them to do so.

Such inspections may be carried out at the premises of the holder of the goods or his representative, of any other person directly or indirectly involved in those operations in a business capacity or of any other person in possession of those documents and data for business purposes.

Article 28

Intra-Community flights and sea crossings

1 Customs controls or formalities shall be carried out in respect of the cabin and hold baggage of persons either taking an intra-Community flight, or making an intra-Community sea crossing, only where the customs legislation provides for such controls or formalities.

2 Paragraph 1 shall apply without prejudice to either of the following:

- a security and safety checks;
- b checks linked to prohibitions or restrictions.

3 The Commission shall, in accordance with the regulatory procedure referred to in Article 184(2), adopt measures for the implementation of this Article, laying down the cases in which and the conditions under which customs controls and formalities may be applied to the following:

- a the cabin and hold baggage of the following:
 - (i) persons taking a flight in an aircraft which comes from a non-Community airport and which, after a stopover at a Community airport, continues to another Community airport;
 - (ii) persons taking a flight in an aircraft which stops over at a Community airport before continuing to a non-Community airport;
 - (iii) persons using a maritime service provided by the same vessel and comprising successive legs departing from, calling at or terminating in a non-Community port;
 - (iv) persons on board pleasure craft and tourist or business aircraft;
- b cabin and hold baggage:

- (i) arriving at a Community airport on board an aircraft coming from a non-Community airport and transferred at that Community airport to another aircraft proceeding on an intra-Community flight;
- (ii) loaded at a Community airport onto an aircraft proceeding on an intra-Community flight for transfer at another Community airport to an aircraft whose destination is a non-Community airport.

Section 8

Keeping of documents and other information; charges and costs

Article 29

Keeping of documents and other information

1 The person concerned shall, for the purposes of customs controls, keep the documents and information referred to in Article 9(1) for at least three calendar years, by any means accessible by and acceptable to the customs authorities.

In the case of goods released for free circulation in circumstances other than those referred to in the third subparagraph, or goods declared for export, that period shall run from the end of the year in which the customs declarations for release for free circulation or export are accepted.

In the case of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, that period shall run from the end of the year in which they cease to be subject to customs supervision.

In the case of goods placed under another customs procedure, that period shall run from the end of the year in which the customs procedure concerned has ended.

2 Without prejudice to Article 68(4), where a customs control in respect of a customs debt shows that the relevant entry in the accounts has to be corrected and the person concerned has been notified of this, the documents and information shall be kept for three years beyond the time limit provided for in paragraph 1 of this Article.

Where an appeal has been lodged or where court proceedings have begun, the documents and information must be kept for the period provided for in paragraph 1 of this Article or until the appeals procedure or court proceedings are terminated, whichever is the later.

Article 30

Charges and costs

1 Customs authorities shall not impose charges for the performance of customs controls or any other application of the customs legislation during the official opening hours of their competent customs offices.

However, the customs authorities may impose charges or recover costs where specific services are rendered, in particular the following:

- a attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

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- b analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions taken pursuant to Article 20 or the provision of information in accordance with Article 8(1);
- c the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved;
- d exceptional control measures, where these are necessary due to the nature of the goods or to potential risk.

2 The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down measures for the implementation of the second subparagraph of paragraph 1, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 184(4).