COMMISSION IMPLEMENTING DECISION (EU) 2023/235

of 1 February 2023

granting a derogation requested by certain Member States pursuant to Regulation (EU) No 952/2013 of the European Parliament and of the Council to use means other than electronic data-processing techniques for the exchange and storage of information for the notification of arrival of a sea-going vessel or of an aircraft

(notified under document C(2023) 663)

(Only the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, French, German, Greek, Hungarian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish and Swedish texts are authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Article 6(4) in conjunction with Article 8(2) thereof,

After consulting the Customs Code Committee,

Whereas:

(1) Article 6(1) of Regulation (EU) No 952/2013 requires that all exchanges of information between customs authorities and between economic operators and customs authorities, and the storage of such information, as required under the customs legislation, be made using electronic data-processing techniques. For this purpose and in accordance with Article 6(2) of Regulation (EU) No 952/2013, the Commission draws up common data requirements.

(2) Article 6(4) of Regulation (EU) No 952/2013 provides for the possibility of the Commission to adopt decisions in exceptional cases to allow one or several Member States to derogate from using electronic data-processing techniques for the exchange and storage of information if such derogation is justified by the specific situation of the requesting Member State and is granted for a specific period of time.

(3) Commission Implementing Decision (EU) 2019/2151 ([2]) establishes the work programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code ('the work programme'). The work programme lists the electronic systems to be developed and the dates on which those systems are expected to become operational. Amongst others, that programme specifies the implementation and deployment window for the notification of arrival in accordance with Article 6(1), Articles 16 and 133 of Regulation (EU) No 952/2013.

(4) Furthermore, Article 278(2)(a) of Regulation (EU) No 952/2013 specifies the deadline until which means other than the electronic data-processing techniques may be used on a transitional basis to implement the provisions related to the notification of arrival in relation to goods brought into the customs territory of the Union.

(5) Due to the significance of the notification of arrival in the supervision of goods brought into the customs territory of the Union, some Member States have already developed electronic systems to manage such notifications, for example through port community systems. Such systems require adjustments pursuant to the provisions of Regulation (EU) No 952/2013 and the related Commission acts, in particular in respect of the common data requirements. Pursuant to Article 278(2)(a) of Regulation (EU) No 952/2013, those adjustments are to be completed until 31 December 2022.

([1]) OJ L 269, 10.10.2013, p. 1.

([2]) Commission Implementing Decision (EU) 2019/2151 of 13 December 2019 establishing the work programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code (OJ L 325, 16.12.2019, p. 168).

(6) However, three major and partially unforeseen circumstances have arisen, all having a significant impact on, and posing complementary challenges to, the resources of Member States: the COVID-19 pandemic caused substantial delays in IT developments in Austria, Belgium, Czechia, France, Greece, Malta, the Netherlands, Poland, Romania, Slovakia and Spain. The withdrawal of the United Kingdom from the European Union and the resulting surge in the number of customs declarations required Belgium, France, the Netherlands and Spain to reshuffle resources and priorities. The financial consequences of the Russian invasion of Ukraine on the customs activities of the neighbouring or geographically close countries, further aggravated the situation and demanded additional resources in Austria and Poland. In particular, procurement and tendering difficulties, as well as budgetary and staffing issues, stemming from the aforementioned circumstances had a significant impact on Member States' abilities to meet the deadlines, as cited by Austria, Bulgaria, Cyprus, Czechia, Denmark, Estonia, Spain, France, Greece, Croatia, Hungary, Luxembourg, Malta, Portugal, Romania, Sweden, Slovakia and Slovenia.

(7) Those specific circumstances have caused significant delays in the ongoing IT developments and prevented certain Member States from completing the deployment of IT means for the processing of the notification of arrival by 31 December 2022. Therefore, on 21 April 2022 Austria, on 3 May 2022 Cyprus, on 6 May 2022 Spain, on 23 May 2022 Slovenia, on 3 June 2022 Bulgaria, on 3 June 2022 Greece, on 7 June 2022 France, on 7 June 2022 Portugal, on 24 June 2022 Belgium, on 24 June 2022 Sweden, on 29 June 2022 Denmark, on 4 July 2022 Slovakia, on 4 July 2022 the Netherlands, on 6 July 2022 Estonia, on 7 July 2022 Poland, on 13 July 2022 Malta, on 19 July 2022 Croatia, on 22 July 2022 Hungary, on 22 July 2022 Luxembourg, on 10 October 2022 Czechia and on 17 October 2022 Romania, requested to use means for the exchange and storage of information other than electronic data-processing techniques in accordance with Article 6(4), second subparagraph, of Regulation (EU) No 952/2013. In compliance with Article 6(4), third subparagraph, such derogations will not affect the exchange of information between the Member State to which it is addressed and other Member States nor the exchange and storage of information in other Member States for the purposes of the application of the customs legislation.

(8) It is therefore appropriate to allow those Member States to continue using their existing IT systems in accordance with the data requirements set out by Member States as provided for in Article 2(4), second subparagraph, of Commission Delegated Regulation (EU) 2015/2446 ([3]) for a limited period.

(9) Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, France, Greece, Hungary, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden are to notify the Commission about the progress made in the development of the electronic system for notification of arrival as part of the progress reporting process laid down in Article 278a of Regulation (EU) No 952/2013. The communication and sharing of national planning information as outlined in Article 4 of Implementing Decision (EU) 2019/2151 is to be ensured.

(10) This decision is to be without prejudice to the obligation of an aircraft operator, pursuant to Article 43(1)(c) of Commission Implementing Regulation (EU) 2021/414 ([4]) to submit via the electronic system referred to in Article 182 of Commission Implementing Regulation (EU) 2015/2447 ([5]) ('ICS2') the particulars required for the notification of arrival set out in Annex B to Delegated Regulation (EU) 2015/2446 and in Annex B to Implementing Regulation (EU) 2015/2447 once it has established a connection to that system within the deployment window set for Release 2 of that system in Implementing Decision (EU) 2019/2151.

([3]) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

([4]) Commission Implementing Regulation (EU) 2021/414 of 8 March 2021 on technical arrangements for developing, maintaining and employing electronic systems for the exchange and storage of information under Regulation (EU) No 952/2013 of the European Parliament and of the Council, C/2021/1454, OJ L 81, 9.3.2021, p. 37.

([5]) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

(11) Having regard to the impacts of the exceptional circumstances that have caused delays in the ongoing IT developments for the processing of the notification of arrival in Member States, the current state of those developments in Member States and the need to avoid any further significant delays, the derogation should last until not later than 31 December 2023 in respect of an aircraft entering the customs territory of the Union, and not later than 29 February 2024 in respect of a sea-going vessel entering the customs territory of the Union.

HAS ADOPTED THIS DECISION:

Article 1

Member States may use means for the exchange and storage of information other than electronic data-processing techniques for the notification of arrival required by Article 133 of Regulation (EU) No 952/2013 of an aircraft until 31 December 2023 and for the notification of arrival of a sea-going vessel until 29 February 2024.

Article 2

This Decision shall apply from 1 January 2023 until not later than 31 December 2023 in respect of an aircraft entering the customs territory of the Union, and not later than 29 February 2024 in respect of a sea-going vessel entering the customs territory of the Union.

Article 3

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Republic of Cyprus, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden.

Done at Brussels, 1 February 2023.

For the Commission
Paolo GENTILONI
Member of the Commission