COMMISSION IMPLEMENTING DECISION (EU) 2023/237

of 1 February 2023

granting a derogation requested by certain Member States to use means other than electronic data-processing techniques for the exchange and storage of information related to the customs declaration for goods brought into the customs territory of the Union laid down in Articles 158, 162, 163, 166, 167, 170 to 174, 201, 240, 250, 254 and 256 of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code

(notified under document C(2023) 667)

(Only the Czech, Danish, Dutch, English, French, German, Greek, Hungarian, Lithuanian, Maltese, Portuguese, Romanian, 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 for 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 dates of deployment for the National Import System ('NIS') and component 2 of the Special Procedures that together cover the customs procedures for goods brought into the customs territory of the Union in accordance with Articles 158, 162, 163, 166, 167, 170 to 174, 201, 240, 250, 254 and 256 of Regulation (EU) No 952/2013.

(4) Furthermore, Article 278(2)(b), 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 customs declaration in relation to goods brought into the customs territory of the Union.

(5) Due to the significance of the NIS in the protection of revenues and the fight against unfair and illicit trade, all Member States have already developed electronic systems to manage declarations submitted in relation to goods brought into the EU. Several Member States have also developed electronic systems for the management of special

[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).

procedures. 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)(b) of Regulation (EU) No 952/2013, those adjustments are to be completed until 31 December 2022.

(6) However, three major and partially unforeseen developments 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, Romania 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, Lithuania, 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, Hungary and Lithuania. 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, Cyprus, Czechia, Denmark, Spain, France, Greece, Hungary, Lithuania, Luxembourg, Malta, Portugal, Romania and Sweden.

(7) These specific circumstances have caused significant delays in the ongoing IT developments and prevented customs authorities from completing the deployment of IT means for the implementation of the NIS and the Component 2 of the Special Procedures by 31 December 2022. Therefore, on 21 April 2022 Austria, on 3 May 2022 Cyprus, on 3 May 2022 Lithuania, on 6 May 2022 Spain, on 25 May 2022 Romania, on 26 May 2022 Czechia, 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 Netherlands, on 13 July 2022 Malta, on 22 July 2022 Luxembourg, and on 7 October 22 Hungary, 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 in Annex 9 of the Commission Delegated Regulation (EU) 2016/341 ([3]) as provided for in Article 2(4), first subparagraph point (g) of Commission Delegated Regulation (EU) 2015/2446 ([4]) for a limited period.

(9) As a consequence of the derogation the customs authorities are to be allowed to continue to provide data for the surveillance of the release for free circulation of goods to the Commission in accordance with Article 55(6) of Commission Implementing Regulation 2015/2447 ([5]).

(10) Austria, Belgium, Cyprus, Czechia, Denmark, France, Greece, Hungary, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Spain and Sweden are to notify the Commission about the progress made in the development of NIS and Component 2 of the Special Procedures 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.

([3]) Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 (OJ L 69, 15.3.2016, p. 1).

([4]) 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).

([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) The NIS and Component 2 of the Special Procedures are key components of Member States' customs IT environment because of their interconnections with various other national applications, the central role of NIS in, among others, the collection of revenues and the enforcement of EU level and national prohibitions and restrictions in connection to the import of goods. Due to the complexity of the NIS and Component 2 of the Special Procedures the changes necessary for the alignment to the UCC requirements have repercussions also on related or dependant IT systems. The duration of the derogation should thus be kept to a strict minimum. In that light and having regard to the impacts of the exceptional circumstances that have caused delays in the ongoing IT developments of NIS and Component 2 of the Special Procedures in Member States and the current state of those developments in Member States the derogation should last until not later than 31 December 2023,

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 implementation of the provisions related to the customs declaration for goods brought into the customs territory of the Union laid down in Articles 158, 162, 163, 166, 167, 170 to 174, 201, 240, 250, 254 and 256 of the Union Customs Code until 31 December 2023.

Article 2

This decision shall apply from 1 January 2023 until not later than 31 December 2023.

Article 3

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

Done at Brussels, 1 February 2023.

For the Commission

Paolo GENTILONI

Member of the Commission