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COMMISSION REGULATION (EU) No 177/2010

of 2 March 2010

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

(OJ L 52, 3.3.2010, p. 28)

Corrected by:

►**C1** Corrigendum, OJ L 51, 25.2.2011, p. 23 (177/2010)

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COMMISSION REGULATION (EU) No 177/2010

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amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1]), and in particular Article 247 thereof,

Whereas:

(1) In the interest of clarity, it is appropriate to modify the structure of Article 313 of Commission Regulation (EEC) No 2454/93 ([2]) setting out the cases where goods are deemed to be of Community status.

(2) In order to establish the European Maritime Transport Space without Barriers referred to in the Communication and action plan from the Commission with a view to establishing a European maritime transport space without barriers ([3]), it is appropriate to simplify the tasks of both economic operators and of customs administrations with regard to goods carried by sea between ports located in the customs territory of the Community.

(3) In particular, it is appropriate to provide for a procedure for the authorisation of regular shipping services and for the registration of ships that makes use of the electronic information and communication system for the issuing of AEO certificates as provided in Article 14x of Regulation (EEC) No 2454/93.

(4) In order to reduce the use of paper documents, the presentation of a printout of a data exchange manifest as referred to in Article 324e of Regulation (EEC) No 2454/93 should not be required when customs authorities have access to the electronic information and communication system containing the data exchange manifest.

(5) It is appropriate to amend Article 324c(1) in order to include the correct reference to the security measures to be taken relating to stamps. It is necessary to amend the erroneous references to Annex 37c to Regulation (EEC) No 2454/93 made in the particulars on the data of the transit declaration set out in Annex 37a to that Regulation as amended by Regulation (EC) No 1192/2008 ([4]).

([1]) OJ L 302, 19.10.1992, p. 1.
([2]) OJ L 253, 11.10.1993, p. 1.
([3]) COM(2009) 10 final.
([4]) OJ L 329, 6.12.2008, p. 1.

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(6) Regulation (EEC) No 2454/93 should therefore be amended accordingly.

(7) In order to safeguard the legitimate expectations of economic operators, authorisations establishing a regular shipping service prior to the date of application of this Regulation should be deemed to be authorisations granted in accordance with this Regulation. In order to ensure that all authorisations are available in the same electronic system, prior authorisations should be stored in the electronic information and communication system for the issuing of the AEO certificate.

(8) It is appropriate to provide Member States and customs authorities with sufficient time to establish a fully functional electronic information and communication system.

(9) Given that the provisions on the particulars on the data of the transit declaration set out in Annex 37a to Regulation (EEC) No 2454/93 as amended by Regulation (EC) No 1192/2008 apply from 1 July 2008, it is appropriate to provide that the amendments to those provisions also apply from that date.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

1. Article 313 is replaced by the following:

'Article 313

1. Subject to Article 180 of the Code and the exceptions listed in paragraph 2 of this Article, all goods in the customs territory of the Community shall be deemed to be Community goods unless it is established that they do not have Community status.

2. The following shall not be deemed to be Community goods unless it is established in accordance with Articles 314 to 323 of this Regulation that they do have Community status:

(a) goods brought into the customs territory of the Community in accordance with Article 37 of the Code;

(b) goods in temporary storage or in a free zone of control type I within the meaning of Article 799 of this Regulation or in a free warehouse;

(c) goods placed under a suspensive procedure or in a free zone of control type II within the meaning of Article 799 of this Regulation.

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3. By way of derogation from paragraph 2(a), goods brought into the customs territory of the Community shall be deemed to be Community goods unless it is established that they do not have Community status:

(a) where, if carried by air, the goods have been loaded or transhipped at an airport in the customs territory of the Community, for consignment to another airport in the Community customs territory, provided that they are carried under cover of a single transport document drawn up in a Member State; or

(b) where, if carried by sea, the goods have been shipped between ports in the customs territory of the Community by a regular shipping service authorised in accordance with Article 313b.';

2. Articles 313a and 313b are replaced by the following:

'Article 313a

A regular shipping service' means a service which carries goods in vessels that ply only between ports situated in the customs territory of the Community and may not come from, go to or call at any points outside that territory or in a free zone of control type I within the meaning of Article 799 of a port in that territory.

Article 313b

1. A shipping company may be authorised to establish regular shipping services following an application to the customs authorities of the Member State in whose territory that company is established or, failing this, in whose territory it has a regional office, provided that the conditions of this Article and of Article 313c are fulfilled.

2. An authorisation shall be issued only to shipping companies which:

(a) are established in the customs territory of the Community or have a regional office there and whose records will be available to the competent customs authorities;

(b) fulfil the conditions laid down in Article 14h;

(c) determine the vessel(s) to be used for the regular shipping service and specify the ports of call once the authorisation is issued;

(d) undertake that on the routes of regular shipping services, no calls will be made at any port in a territory outside the customs territory of the Community or at any free zone of control type I in a port in the customs territory of the Community, and that no transhipments of goods will be made at sea;

(e) undertake to register the names of the vessels assigned to regular shipping services and the ports of call with the authorising customs authority.

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3. The application for an authorisation for a regular shipping service shall specify the Member States concerned by that service. The customs authorities of the Member State to whom the application has been made (the authorising customs authority) shall notify the customs authorities of the other Member States concerned by the shipping service (the corresponding customs authorities) through the electronic information and communication system referred to in Article 14x.

Without prejudice to paragraph 4, within 45 days of receipt of such notification, the corresponding customs authorities may refuse the application on the basis that the condition of paragraph 2(b) is not met and communicate the refusal through the electronic information and communication system referred to in Article 14x. The corresponding customs authority shall indicate the grounds for the refusal and the legal provisions relating to the offences committed. In that case, the authorising customs authority shall not issue the authorisation and shall notify the refusal to the applicant stating the reasons for the refusal.

Where no reply or refusal is received from the corresponding customs authorities, the authorising customs authority, having examined whether the conditions for the authorisation are met, shall issue an authorisation which shall be accepted by the other Member States concerned by the shipping service. The electronic information and communication system referred to in Article 14x shall be used to store the authorisation and to notify the corresponding customs authorities that the authorisation was issued.

4. Where the shipping company holds an AEO certificate referred to in point (a) or (c) of Article 14a(1), the requirements set out in points (a) and (b) of paragraph 2 of this Article, and as referred to in paragraph 3 of this Article, shall be deemed to be met.';

3. the following Articles 313c to 313f are inserted:

'Article 313c

1. Once a regular shipping service has been authorised in accordance with Article 313b, the shipping company concerned shall be required to use the authorisation for the vessels registered for that purpose.

2. The shipping company shall inform the authorising customs authority of any circumstances arising after the authorisation is granted which may influence its continuation or content.

Where an authorisation is revoked by the authorising customs authority or at the request of the shipping company, the authorising customs authority shall notify the revocation to the corresponding customs authorities using the electronic information and communication system referred to in Article 14x.

3. The procedure provided for in Article 313b(3) shall apply if the authorisation is to be amended to cover Member States that were not included in the original authorisation or a previous authorisation. The provisions of Article 313b(4) shall apply *mutatis mutandis*.

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Article 313d

1. The shipping company authorised to establish regular shipping services shall communicate to the authorising customs authority the following:

(a) the names of the vessels assigned to the regular shipping service;

(b) the first port where the vessel starts its operation as a regular shipping service;

(c) the ports of call;

(d) any amendments to the information referred to in points (a), (b) and (c);

(e) the date and time when the amendments referred to in point (d) take effect.

2. The information communicated in accordance with paragraph 1 shall be registered by the authorising customs authority in the electronic information and communication system referred to in Article 14x within one working day from the day of its communication. It shall be accessible to the customs authorities operating in ports located in the customs territory of the Community.

The registration shall take effect on the first working day following that of the registration.

Article 313e

When a vessel registered to a regular shipping service is forced by circumstances beyond its control to tranship goods at sea or temporarily put into a port that is not part of the regular shipping service, including ports outside the customs territory of the Community or a free zone of control type I of a port in the customs territory of the Community, the shipping company shall immediately inform the customs authorities of the subsequent Community ports of call, including those along the vessel's scheduled route. Goods loaded or unloaded in those ports shall not be deemed to be Community goods.

Article 313f

1. The customs authorities may require proof from the shipping company that the provisions of Articles 313b to 313e have been observed.

2. Where the customs authorities establish that the provisions referred to in paragraph 1 have not been observed by the shipping company, they shall immediately inform all the customs authorities concerned by the shipping service, using the electronic information and communication system referred to in Article 14x, so that those authorities can take the required measures.';

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4. in Article 324c(1), the second subparagraph is replaced by the following:

‘Section 27 of Annex 37d shall apply *mutatis mutandis*.’;

5. in Article 324e(4), points (c) and (d) are replaced by the following:

‘(c) the manifest transmitted by electronic data exchange (data exchange manifest) shall be presented to the customs authorities at the port of departure at the latest on the working day following the departure of the vessel and in any case before it arrives at the port of destination. The customs authorities may require a printout of the data exchange manifest to be presented when they do not have access to an information system as approved by the customs authorities containing the data exchange manifest;

(d) the data exchange manifest shall be presented to the customs authorities at the port of destination. The customs authorities may require a printout of the data exchange manifest to be presented when they do not have access to an information system as approved by the customs authorities containing the data exchange manifest.’;

6. in Annex 37a, Title II, Point B ‘Particulars on the data of the transit declaration’, the Data group ‘PACKAGES’ is amended as follows:

(a) the text of the attribute ‘Marks and number of packages’ is replaced by the following:

‘**Marks and numbers of packages** **(box 31)**

Type/Length: an ..42

The attribute shall be used if the attribute “**Kind of packages**” contains other codes presented in Annex 38 than those for bulk (VQ, VG, VL, VY, VR or VO) or for “Unpacked” (NE, NF, NG). It is optional if the attribute “**Kind of packages**” contains one of the previously mentioned codes.’;

(b) the text of the attribute ‘Number of packages’ is replaced by the following:

‘**Number of packages** **(box 31)**

►**C1** Type/length: n ..5 ◄

The attribute shall be used if the attribute “**Kind of packages**” contains other codes shown in Annex 38 than those for bulk (VQ, VG, VL, VY, VR or VO) or for “unpacked” (NE, NF, NG). It may not be used if the attribute “**Kind of packages**” contains one of the previously mentioned codes.’

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Article 2

Authorisations establishing a regular shipping service prior to the date of application referred to in the second paragraph of Article 3 of this Regulation shall be deemed to be authorisations issued in accordance with Regulation (EEC) No 2454/93 as amended by this Regulation.

The authorising customs authority shall store these authorisations in the electronic information and communication system referred to in Article 14x of Regulation (EEC) No 2454/93 within one month from the date of application referred to in the second paragraph of Article 3 of this Regulation.

Article 3

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

Points 2 and 3 of Article 1 shall apply from 1 January 2012.

Points 4 and 6 of Article 1 shall apply from 1 July 2008.

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