COMMISSION REGULATION (EU) No 430/2010

of 20 May 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

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) Regulation (EC) No 648/2005 of the European Parliament and of the Council ([2]) introduced in Regulation (EEC) No 2913/92 the obligation to lodge entry or exit summary declarations by electronic means. Commission Regulation (EC) No 273/2009 ([3]) derogating from certain provisions of Commission Regulation (EEC) No 2454/93 ([4]) provides for a transitional phase expiring on 31 December 2010 during which economic operators are able, but not obliged, to lodge entry and exit summary declarations by electronic means.

(2) It is appropriate to make some adjustments to the rules concerning entry and exit summary declarations aiming at reducing administrative burdens in cases where, for the purpose of safety and security, such declarations are not necessary. Furthermore, for the purpose of better risk analysis, household effects as defined in Article 2(1)(d) of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty ([5]) should not be exempted from such declarations if they are carried under a transport contract.

(3) In certain cases the provision of safety and security data in customs declarations and the requirement of a specific deadline for providing such declarations are not necessary for safety and security purposes so that further waivers should be introduced in this regard; such waivers should, however, not affect the general rules on customs declarations, in whatever form they may be lodged.

(4) In certain cases where the safety and security related deadlines for export declarations do not apply, such as ship and aircraft supplies, it should be possible for the customs authorities to authorise reliable economic operators to enter the goods exported in their records and to report their export operations on a periodic basis after the goods have left the customs territory of the Community.

(5) Commission Regulation (EC) No 1192/2008 ([6]) amending Regulation (EEC) No 2454/93 introduced common criteria and a common application form for the granting of authorisations for simplified declarations and the local clearance procedure. It should be clarified that these rules apply to all customs procedures. The same Regulation introduced in Article 253a with effect from 1 January 2011 the requirement that the use of simplified declarations or the local clearance procedure will be conditional on the lodging of electronic customs declarations and notifications. Some Member States have informed the Commission that such systems may not be available in all cases by that date. Provided that effective risk analysis is carried out, it should be possible for those Member States, under conditions which they prescribe, to accept customs declarations and notifications in other than electronic form until 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) ([7]) will apply.

(6) In cases where goods in temporary storage or in a control type I free zone are re-exported from the customs territory of the Community without an exit summary declaration being required, an alternative means for recording or notifying the re-exportation and the person responsible need to be laid down.

(7) It should be clarified that the export formalities are not only to be used for Community goods which are to be brought to a destination outside the customs territory of the Community, but also with regard to tax exempt aircraft and ship supplies so that persons delivering such supplies can receive a proof of exit from the customs territory of the Community needed for the purposes of tax exemption. The same rules should apply where non-Community goods are to be re-exported under cover of a re-export declaration.

([1]) OJ L 302, 19.10.1992, p. 1.
([2]) OJ L 117, 4.5.2005, p. 13.
([3]) OJ L 91, 3.4.2009, p. 14.
([4]) OJ L 253, 11.10.1993, p. 1.
([5]) OJ L 324, 10.12.2009, p. 23.
([6]) OJ L 329, 6.12.2008, p. 1.
([7]) OJ L 145, 4.6.2008, p. 1.

(8) Articles 278, 279 and 280 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] and Article 3 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC [2] require the use of the import and export formalities where Community goods are moved to and from territories within the customs territory of the Community in which those Directives do not apply. It is appropriate to refer to those provisions and to exempt such movements from the requirement to provide safety and security related data and to respect the special deadlines for safety and security related controls given that those provisions should apply only for goods brought into and out of the customs territory of the Community. Due to their geographical situation, the special deadlines for safety and security related controls and the provision of safety and security related data are also not necessary in cases where goods are brought to Heligoland, the Republic of San Marino and the Vatican City State.

(9) The customs office at which the exit summary declaration is to be lodged and the person responsible for lodging such declaration should be specified. This clarification should include situations in which, instead of an exit summary declaration, a transit declaration containing the data of an exit summary declaration is lodged.

(10) In order to facilitate customs supervision at the customs office of exit, it is necessary to specify the obligations of persons handing over goods to another person before the goods are carried out of the customs territory of the Community and the obligations of persons having to provide information on the exit of goods to the customs office of exit. The same obligations should apply in cases where goods declared for export and presented at the customs office of exit are no longer destined to be brought out of the customs territory of the Community and are removed from the customs office of exit.

(11) By virtue of Directive 2008/118/EC the use of the Excise Movement Computerised System (EMCS) is mandatory for the movement of excise goods under suspension of excise duty as of 1 January 2011. According to that Directive, the movement of Community goods under suspension of excise duty with a destination outside the customs territory of the Community has to take place under the export procedure for which a computerised system is to be used. The special rules concerning the use of the administrative accompanying document provided for by Commission Regulation (EEC) No 2719/92 of 11 September 1992 on the accompanying administrative document for the movement under duty-suspension arrangements of products subject to excise duty [3] should therefore be deleted with effect from 1 January 2011. Export procedures which started under cover of an administrative accompanying document before that date should be terminated in accordance with Article 793c of Regulation (EEC) No 2454/93 as it was applicable on 31 December 2010.

(12) These amendments should not require any changes to those electronic systems which are or have to be in place when this Regulation becomes applicable.

(13) 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. in Article 1 the following point 18 is added:

'18. *Exit summary declaration* means: The summary declaration, referred to in Article 182c of the Code, which is to be lodged for goods to be brought out of the customs territory of the Community, except where otherwise provided for in this Regulation.';

2. Article 181c is amended as follows:

(a) point (e) is replaced by the following:

'(e) goods for which a customs declaration made by any other act is permitted in accordance with Articles 230, 232 and 233 with the exception of, if carried under a transport contract, household effects as defined in Article 2(1)(d) of Council Regulation (EC) No 1186/2009 (*), pallets, containers, and means of road, rail, air, sea and inland waterway transport;

(*) OJ L 324, 10.12.2009, p. 23.';

[1] OJ L 347, 11.12.2006, p. 1.
[2] OJ L 9, 14.1.2009, p. 12.
[3] OJ L 276, 19.9.1992, p. 1.

(b) point (g) is replaced by the following:

'(g) goods for which an oral customs declaration is permitted in accordance with Articles 225, 227 and 229(1) with the exception of, if carried under a transport contract, household effects as defined in Article 2(1)(d) of Regulation (EC) No 1186/2009, pallets, containers, and means of road, rail, air, sea and inland waterway transport;';

(c) point (m) is replaced by the following:

'(m) the following goods brought into the customs territory of the Community directly from drilling or production platforms or wind turbines operated by a person established in the customs territory of the Community:

(i) goods which were incorporated in such platforms or wind turbines, for the purposes of their construction, repair, maintenance or conversion;

(ii) goods which were used to fit to or to equip the said platforms or wind turbines;

(iii) other provisions used or consumed on the said platforms or wind turbines; and

(iv) non-hazardous waste products from the said platforms or wind turbines;';

(d) the following point (o) is added:

'(o) goods brought from territories within the customs territory of the Community where Council Directive 2006/112/EC (*) or Council Directive 2008/118/EC (**) does not apply, and goods brought from Heligoland, the Republic of San Marino and the Vatican City State to the customs territory of the Community.

(*) OJ L 347, 11.12.2006, p. 1.
(**) OJ L 9, 14.1.2009, p. 12.';

3. in Article 184d(3) the phrase 'Article 181c(c) to (i), (l) to (n)' is replaced by 'Article 181c(c) to (i), (l) to (o)';

4. in Article 189 the following paragraph is added:

'However, goods brought into the customs territory of the Community which are unloaded and reloaded onto the same means of transport during its current voyage in order to enable the unloading or loading of other goods, shall not be presented to customs.';

5. in Article 253a the following paragraph is added:

'However, in cases where the customs authorities' or the economic operators' computerised systems are not in place for the lodgement or receipt of simplified customs declarations or local clearance notifications using a data-processing technique, the customs authorities may accept other forms of declarations and notifications as prescribed by them, provided effective risk analysis is carried out.';

6. in Article 261, paragraph 1 is replaced by the following:

'1. Authorisation to use the simplified declaration procedure shall be granted to the applicant if the conditions and criteria referred to in Articles 253, 253a, 253b and 253c are fulfilled.';

7. in Article 264, paragraph 1 is replaced by the following:

'1. Authorisation to use the local clearance procedure shall be granted to the applicant if the conditions and criteria referred to in Articles 253, 253a, 253b and 253c are fulfilled.';

8. in Article 269, paragraph 1 is replaced by the following:

'1. Authorisation to use the simplified declaration procedure shall be granted to the applicant if the conditions and criteria referred to in Articles 253, 253a, 253b, 253c and 270 are fulfilled.';

9. in Article 272, paragraph 1 is replaced by the following:

'1. Authorisation to use the local clearance procedure shall be granted to the applicant if the conditions and criteria referred to in paragraph 2 and Articles 253, 253a, 253b, 253c and 274 are fulfilled.';

10. Article 279 is replaced by the following:

'*Article 279*

The export formalities provided for in Articles 786 to 796e may be simplified in accordance with this Chapter.';

11. in Article 282, paragraph 1 is replaced by the following:

'1. Authorisation to use the simplified declaration procedure shall be granted according to the conditions and in the manner laid down in Articles 253, 253a, 253b, 253c, 261(2) and, *mutatis mutandis*, Article 262.';

12. Article 283 is replaced by the following:

'*Article 283*

Authorisation to use the local clearance procedure shall be granted according to the conditions and in the manner laid down in Articles 253, 253a, 253b and 253c to any person, hereinafter referred to as an "approved exporter", wishing to carry out export procedures at his premises or at the other places designated or approved by the customs authorities.';

13. Article 284 is deleted;

14. in Article 285a, the following paragraph 1a is added:

'1a. In cases where Article 592a or 592d applies, the customs authorities may authorise an economic operator to enter in his records immediately each export operation and to report all of them to the authorising customs office in a supplementary declaration on a periodic basis of up to one month after the goods have left the customs territory of the Community. Such authorisation may be granted under the following conditions:

(a) the economic operator uses the authorisation only for goods which are not subject to prohibitions and restrictions;

(b) the economic operator provides all the information to the customs office of export which this office considers necessary to enable it perform controls on the goods;

(c) in cases where the customs office of export is different from the customs office of exit, the customs authorities shall have agreed to the use of such an arrangement and the information referred to under point (b) is also available to the customs office of exit.

Where the arrangement referred to in the first subparagraph is used, entry of the goods in the records shall be deemed to be release for export and exit.';

15. Article 592a is amended as follows:

(a) point (e) is replaced by the following:

'(e) goods for which a customs declaration made by any other act is permitted in accordance with Articles 231, 232(2) and 233 with the exception of, if carried under a transport contract, household effects as defined in Article 2(1)(d) of Regulation (EC) No 1186/2009, pallets, containers, and means of road, rail, air, sea and inland waterway transport';

(b) point (g) is replaced by the following:

'(g) goods for which an oral declaration is permitted in accordance with Articles 226, 227 and 229(2) with the exception of, if carried under a transport contract, household effects as defined in Article 2(1)(d) of Regulation (EC) No 1186/2009, pallets, containers, and means of road, rail, air, sea and inland waterway transport';

(c) point (l) is replaced by the following:

'(l) the following goods brought out of the customs territory of the Community directly to drilling or production platforms or wind turbines operated by a person established in the customs territory of the Community:

(i) goods to be used for the construction, repair, maintenance or conversion of such platforms or wind turbines;

(ii) goods to be fitted to or used to equip the said platforms or wind turbines;

(iii) provisions to be used or consumed on the said platforms or wind turbines';

(d) the following points (n) to (p) are added:

'(n) goods entitled to relief pursuant to the Vienna Convention on diplomatic relations of 18 April 1961, the Vienna Convention on consular relations of 24 April 1963 or other consular conventions, or the New York Convention of 16 December 1969 on special missions;

(o) goods which are supplied for incorporation as parts of or accessories in vessels and aircraft, motor fuels, lubricants and gas necessary for the operation of the vessels or aircraft, foodstuffs, and other items to be consumed or sold on board;

(p) goods destined for territories within the customs territory of the Community where Directive 2006/112/EC or Directive 2008/118/EC does not apply, and goods dispatched from these territories to another destination in the customs territory of the Community, as well as goods dispatched from the customs territory of the Community to Heligoland, the Republic of San Marino and the Vatican City State.';

16. Article 592b is amended as follows:

(a) in paragraph 1 point (e) is deleted;

(b) paragraph 2 is replaced by the following:

'2. Where the customs declaration is not lodged by use of a data processing technique, the time limits laid down in points (a)(iii) and (iv), (b), (c) and (d) of paragraph 1 shall be at least four hours.';

17. in Article 592g the phrase 'Article 592a(c) to (m)' is replaced by 'Article 592a(c) to (p)';

18. in Chapter 2 of Title IV the following Article 786 is inserted:

'Article 786

1. The export procedure, within the meaning of Article 161(1) of the Code, shall be used where Community goods are to be brought to a destination outside the customs territory of the Community.

2. The formalities concerning the export declaration laid down in this Chapter shall also be used in cases:

(a) where Community goods are to move to and from territories within the customs territory of the Community where Directive 2006/112/EC or Directive 2008/118/EC does not apply;

(b) where Community goods are delivered tax exempt as aircraft and ship supplies, regardless of the destination of the aircraft or ship.

However, in the cases referred to under points (a) and (b), it shall not be necessary to include in the export declaration the particulars for an exit summary declaration set out in Annex 30A.';

19. in Article 792a(2) the phrase 'Article 793a(6)' is replaced by 'point (b) of the second subparagraph of Article 793(2)';

20. in Article 793 the following paragraph 3 is added:

'3. In the cases referred to in point (b) of the second subparagraph of paragraph 2, where goods taken over under a single transport contract arrive at the customs office at the actual point of exit from the customs territory of the Community, the carrier shall, on request, make available to that office one of the following:

(a) the movement reference number of the export declaration where available; or

(b) a copy of the single transport contract or the export declaration for the goods concerned; or

(c) the unique consignment reference number or the transport document reference number and the number of packages and, if containerised, the equipment identification number; or

(d) information concerning the single transport contract or the transport of the goods out of the customs territory of the Community contained in the data processing system of the person taking over the goods or another commercial data processing system.';

21. in Article 793a paragraph 6 is deleted;

22. Article 793c is deleted;

23. in Article 796c the second paragraph is replaced by the following:

'Such notification shall contain the movement reference number of the export declaration.';

24. Article 796d is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Without prejudice to point (b) of the second subparagraph of Article 793(2), the customs office of exit shall satisfy itself that the goods presented correspond to those declared and shall supervise the physical exit of the goods from the customs territory of the Community. Any examination of the goods shall be carried out by the customs office of exit using the "anticipated export record" message received from the customs office of export as a basis for such examination.

In order to allow for customs supervision where goods are unloaded from a means of transport and handed over to another person holding the goods, and loaded to another means of transport that will carry the goods out of the customs territory of the Community following presentation at the customs office of exit, the following provisions shall apply:

(a) At the latest when handing over the goods the holder shall advise the next holder of the goods of the unique consignment reference number or the transport document reference number, and the number of packages or, if containerised, the equipment identification number, and, if one has been issued, the movement reference number of the export declaration. This advice may be made electronically and/or using commercial, port or transport information systems and processes or, where not available, in any other form. At the latest upon handover of the goods, the person to whom they are handed over shall record the advice provided by the immediately preceding holder of the goods;

(b) A carrier may not load goods for carriage out of the customs territory of the Community unless the information referred to under point (a) has been provided to the carrier;

(c) The carrier shall notify the exit of the goods to the customs office of exit by providing the information referred to under point (a) unless that information is available to the customs authorities through existing commercial, port or transport systems or processes. Wherever possible this notification shall form part of existing manifest or other transport reporting requirements.

For the purposes of the second subparagraph "carrier" means the person who brings the goods, or who assumes responsibility for the carriage of the goods, out of the customs territory of the Community. However,

— in the case of combined transportation, where the active means of transport leaving the customs territory of the Community is only transporting another means of transport which, after the arrival of the active means of transport at its destination, will move by itself as an active means of transport, carrier means the person who will operate the means of transport which will move by itself once the means of transport leaving the customs territory of the Community has arrived at its destination,

— in the case of maritime or air traffic under a vessel sharing or contracting arrangement, carrier means the person who has concluded a contract, and issued a bill of lading or air waybill, for the actual carriage of the goods out of the customs territory of the Community.';

(b) the following paragraph 4 is added:

'4. Without prejudice to Article 792a, where goods declared for export are no longer destined to be brought out of the customs territory of the Community, the person who removes the goods from the customs office of exit for carriage to a place within that territory shall provide to the customs office of exit the information referred to under point (a) of the second subparagraph of paragraph 1. This information may be provided in any form.';

25. in Article 796da(4) point (e) is replaced by the following:

'(e) economic operators' records of goods supplied to oil and gas drilling and production platforms or wind turbines.';

26. in Article 841(1) the phrase 'Articles 787 to 796e' is replaced by 'Articles 786(1), (2)(b) and 787 to 796e';

27. Article 841a is replaced by the following:

'Article 841a

1. In cases other than those defined in the third sentence of Article 182(3) of the Code, re-exportation shall be notified by an exit summary declaration in accordance with Articles 842a to 842e, except where this requirement is waived in accordance with Article 842a(3) or (4).

2. Where goods under temporary storage or in a control type I free zone are re-exported and no customs declaration or exit summary declaration is required, re-exportation shall be notified to the customs office competent for the place from where the goods will leave the customs territory of the Community prior to the exit of the goods in the form prescribed by the customs authorities.

The person referred to in paragraph 3 shall at its request, be authorised to amend one or more particulars of the notification. Such amendment is no longer possible after the goods mentioned in the notification have left the customs territory of the Community.

3. The notification referred to under the first subparagraph of paragraph 2 shall be made by the carrier. However, such notification shall be lodged by the holder of the temporary storage facility or the holder of a storage facility in a control type I free zone, or any other person able to present the goods, where the carrier has been informed, and given its consent under a contractual arrangement, that the person referred to in the second sentence of this paragraph lodges the notification. The customs office of exit may assume, except where there is evidence to the contrary, that the carrier has given its consent under a contractual arrangement and that the notification has been lodged with its knowledge.

The last subparagraph of Article 796d(1) shall apply with regard to the definition of the carrier.

4. In cases where, following the notification referred to under the first subparagraph of paragraph 2, the goods are no longer destined to be brought out of the customs territory of the Community, Article 796d(4) shall apply *mutatis mutandis*.';

28. Article 842a is replaced by the following:

'Article 842a

1. Without prejudice to paragraphs 3 and 4, where bringing goods out of the customs territory of the Community does not require a customs declaration, the exit summary declaration shall be lodged at the customs office of exit.

2. For the purpose of this Chapter, the "customs office of exit" shall be:

(a) the customs office competent for the place from where the goods will leave the customs territory of the Community; or

(b) where the goods are to leave the customs territory of the Community by air or sea, the customs office competent for the place where the goods are loaded onto the vessel or aircraft on which they will be brought to a destination outside the customs territory of the Community.

3. No exit summary declaration is required when an electronic transit declaration contains the exit summary declaration data provided the office of destination is also the customs office of exit or the office of destination is outside the customs territory of the Community.

4. An exit summary declaration shall not be required in the following cases:

(a) the exemptions listed in Article 592a;

(b) where goods are loaded at a port or airport in the customs territory of the Community for discharge at another Community port or airport, provided that, upon request, evidence in the form of a commercial, port or transport manifest or loading list is made available to the customs office of exit regarding the intended place of unloading. The same applies when the vessel or aircraft that transports the goods is to call at a port or airport outside the customs territory of the Community and those goods are to remain loaded on board the vessel or aircraft during the call at the port or airport outside the customs territory of the Community;

(c) where, in a port or airport, the goods are not unloaded from the means of transport which carried them into the customs territory of the Community and which will carry them out of that territory;

(d) where the goods were loaded at a previous port or airport in the customs territory of the Community and remain on the means of transport that will carry them out of the customs territory of the Community;

(e) where goods in temporary storage or in a control type I free zone are transhipped from the means of transport that brought them to that temporary storage facility or free zone under the supervision of the same customs office onto a vessel, airplane or railway that will carry them from that temporary storage facility or free zone out of customs territory of the Community, provided that:

(i) the transhipment is undertaken within fourteen calendar days from when the goods were presented for temporary storage or at a control type I free zone; in exceptional circumstances, the customs authorities may extend this period of time in order to deal with those circumstances;

(ii) information about the goods is available to the customs authorities; and

(iii) the destination of the goods and the consignee do not change, to the knowledge of the carrier;

(f) where evidence that the goods to be brought out of the customs territory of the Community were already covered by a customs declaration with the exit summary declaration data is made available to the customs office of exit through either the data processing system of the temporary storage holder, the carrier or the port/airport operator, or through another commercial data processing system, provided it has been approved by the customs authorities.

Without prejudice to Article 842d(2), in the cases referred to in points (a) to (f), the customs controls shall take into account the special nature of the situation.

5. The exit summary declaration, where required, shall be lodged by the carrier. However, such declaration shall be lodged by the holder of the temporary storage facility or the holder of a storage facility in a control type I free zone, or any other person able to present the goods, where the carrier has been informed, and given its consent under a contractual arrangement, that the person referred to in the second sentence of this paragraph lodges the declaration. The customs office of exit may assume, except where there is evidence to the contrary, that the carrier has given its consent under a contractual arrangement and that the declaration has been lodged with its knowledge.

The last subparagraph of Article 796d(1) shall apply with regard to the definition of the carrier.

6. In cases where, following the lodgement of an exit summary declaration, the goods are no longer destined to be brought out of the customs territory of the Community, Article 796 d(4) shall apply *mutatis mutandis.*';

29. the second subparagraph of Article 842d(2) is replaced by the following:

'Where goods covered by one of the exemptions from the requirement for an exit summary declaration laid down in Article 842a(4) are brought out of the customs territory of the Community, risk analysis shall be carried out upon presentation of the goods where required and on the basis of documentation or other information covering the goods.'

Article 2

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

Points 1 to 13 and 15 to 29 of Article 1 shall apply from 1 January 2011. However, where an export operation has started before 1 January 2011 under cover of an administrative accompanying document in accordance with Article 793c(1), the customs office of exit shall apply the measures laid down in Article 793c on and after that date.

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

Done at Brussels, 20 May 2010.

For the Commission
The President
José Manuel BARROSO