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**NOTE FOR THE ATTENTION OF DELEGATES TO THE CUSTOMS EXPERT
GROUP –GENERAL CUSTOMS LEGISLATION SECTION**

Re-assessment of authorisations already in force on 1 May 2016 (Article 250 DA)

INTRODUCTION

This note aims to provide some information on the obligation that Member States have to re-assess by 1 May 2019 the authorisations granted under the Community Custom Code (Regulation 2913/92)¹ and its implementing provisions (Regulation 2454/93)².

A discussion on this topic will take place at the Customs Expert Group – General Legislation Section meeting on 11 June 2018.

Re-assessment of the authorisations and the criteria related to its granting

In principle³, the authorisations granted on the basis of the Community Custom Code and its implementing provisions, must be re-assessed according to the criteria of the UCC/DA/IA by 1 May 2019 (Article 250(1) DA⁴ read together with Article 345(1) IA⁵). In practice, in order to allow a smooth continuation of customs operations, all the authorisations with an unlimited validity period and authorisations having an initial period of validity expiring after 1 May 2019 need to re-assessed before 1 May 2019.

Due to the fact that the authorisations granted under the Community Customs Code were managed nationally and identified by various names according to national practices, the Commission has not been able to identify all variations of authorisations granted under the Community Customs Code.

The Commission thus urges the Member States, if they have not already done so, to identify all existing authorisations that they granted under the Community Customs Code, in preparation for the re-assessment of those authorisations.

¹ Council Regulation (EEC) 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

² Commission Regulation (EEC) 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

³ As an exception to this rule, the following authorisations shall not be subject to re-assessment and remain valid for the period set out in those authorisations:

- a) authorisations of exporters for making out invoice declarations as referred to in Articles 97 and 117 of Regulation (EEC) No 2454/93
- b) authorisations for the management of materials using the accounting segregation method as referred to in Article 88 of Regulation (EEC) No 2454/93.
- c) decisions relating to binding information already in force on 1 May 2016 according to Article 252 Regulation 2015/2446
- d) decision granting deferment of payment for the use of the procedure referred to in Article 226(a) of Regulation (EEC) No 2913/92 according to Article 253(a) of Regulation 2015/2446
- e) Single Authorisations for Simplified Procedures (SASP) issued in accordance with Regulation (EEC) No 2454/93 and still valid on 1 May 2016 shall remain valid until the respective dates of deployment of the CCI and AES

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 with regard to detailed rules of specifying some of the provisions of the Union Customs Code (OJ L 343, 29.12.2016, 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, 29.12.2016, p. 558).

The result of the re-assessment exercise shall be to revoke the authorisations granted under the Community Customs Code and, where appropriate, grant new authorisations in accordance with the UCC criteria.

In the meantime, even after 1 May 2016 when the UCC took effect, the holder can continue to use the old authorisation and it remains valid until the moment it is re-assessed (Article 251(1)(b) DA).

This implies also that, for instance, an authorisation that was issued without the requirement of a guarantee remains valid without the economic operator having to provide a guarantee after the entry into application of the UCC on 1 May 2016.

From a legal point of view, neither the reassessment nor the granting of a new authorisation under the UCC rules following a re-assessment requires an application by the economic operator. The re-assessment exercise requires that the customs authorities both (i) revoke the existing authorisation and (ii) decide whether or not to grant a new authorisation, according to the UCC criteria, without the economic operator having to apply for it. The customs authority shall ensure that all information needed to grant a new authorisation following the reassessment are at their disposal when taking the decision. Therefore the holder of the authorisation to be re-assessed may be requested to provide data elements before a new authorisation is granted.

However, in the case Member States have not reassessed the authorisations and the deadline is approaching, the economic operators are encouraged to apply for new authorisations, in order to avoid finding themselves in a situation where they would not be covered by a valid authorisation issued under the UCC rules.

In order to facilitate the exercise from a practical point of view and considering the current practice of some Member States, the Commission would like to suggest to the customs administration to contact the holder of the authorisation prior to the start of the re-assessment exercise, in order to verify if the authorisation is still needed. It may be the case that the holder does not make use of an authorisation and therefore does not need it to be re-assessed and, where appropriate, renewed.

In the case where, following this contact, the holder of the authorisation informs the customs authority that the authorisation is not needed anymore, the customs authorities have to revoke the authorisation in accordance with Article 28(1)(b) UCC.

Re-assessment of the authorisations in relation to the customs IT systems

On 2 March 2018, the Commission formally adopted the proposal to amend Article 278 UCC. This amendment will allow customs authorities and economic operators to continue using some transitional arrangements (i.e. some of the existing customs electronic systems and paper-based procedures) after 2020, until 2025 at the latest. The reason for the extension of the transitional arrangements is that some of the electronic systems that are necessary to apply the UCC will not be operational by 2020.

The postponement of the deadline for the upgrade or deployment of some IT systems refers to the Guarantee Management system (GUM), the Import Control System (ICS2), the Proof of Union Status system (PoUS), the Centralised Clearance for Import system (CCI), the New Computerised Transit System (NCTS), the export component of the Special procedures system, the Automated Export System (AES) and the National Export Systems).

The extension of the deadline for the transitional use of means other than electronic data-processing techniques does not dispense with the obligation for the Member States to proceed with the re-assessment of the authorisations or with the obligation to grant the new authorisations only where the criteria and conditions in the UCC and its delegated and implementing regulations are met before 1 May 2019 at the latest. This means for instance that where a guarantee needs to be provided, the new authorisation can be granted only if the guarantee is in place in accordance with the UCC at the latest on 1 May 2019.

A separate matter is the monitoring of the guarantees, which falls within the scope of the future GUM system. The deployment deadline for that system has been shifted to 2025 at the latest. However, GUM has no impact on the decisions to authorise the use of a comprehensive guarantee (which form part of the CDMS). GUM will allow proper monitoring of those guarantees, which is a different matter.

Implementation of the national re-assessment planning

The Commission reminds Member States that no exception is provided for in respect to the obligation to re-assess all authorisations by 1 May 2019.

In case the national administrations do not re-assess the authorisations by 1 May 2019, economic operators should *prima facie* be allowed to continue to use their authorisations⁶. Such a situation could result in non-application of guarantees and non-recovery of the customs debt and therefore create a risk that the Member State would be held responsible for that debt.

The Commission is available to offer any support and advice that any national administration may need with regard to how individual authorisations should be re-assessed, in order for the procedure to be carried out in the smoothest and most effective way. In this sense, the mobilisation of the Customs 2020 programme may be beneficial to address the subject and to identify good practices and provide guidance in the matter. Activities, such as workshops, project groups, working visits under the Programme can facilitate the cooperation between the Member States and the Commission, and also amongst the Member States themselves.

The Commission would appreciate if Member States could raise in the meeting on 11 June any issue or problem they encountered in the re-assessment process and discuss the state of play of their plans.

⁶ This does not apply to authorisations having a limited period of validity after 1 May 2019 – these will become invalid on 1 May 2019 according to Article 251(1)(a) Regulation (EU) 2015/2446.