



Brussels, **XXX**  
Amendment Art 278  
[...](2017) **XXX** draft

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) No 952/2013 of the European Parliament and of the Council  
of 9 October 2013 as regards the deadline for the use of transitional measures**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The Union Customs Code<sup>1</sup> provisions are being applied since 1 May 2016. A major goal of the Code is the shift to a complete use of electronic systems for interactions between economic operators and customs authorities, and between customs authorities, and the end of paper-based procedures.

The full benefits of the Code will be obtained when the seventeen electronic systems that are set out in the UCC Work Programme<sup>2</sup> are completed. The systems can be divided into two categories:

- i. fourteen trans-European systems including some systems that have national components for development by the Member States and
- ii. three national systems that have to be developed or upgraded by the Member States alone.

According to the Work Programme, the work on the electronic systems necessary for the Code is divided between the Commission and the Member States on the following basis:

- The Commission delivers network and capacity upgrades as well as certain electronic systems, such as data bases serving all Member States; and
- The Member States deliver entry processing systems and national interfaces with EU systems either built on the basis of Commission specifications or on national specifications established in line with EU customs law.

The Code provides in Article 278 that, until the shift to an electronic environment is completed, some transitional measures apply; these are essentially the continuation of existing electronic and paper-based systems until the new electronic systems are operational. These transitional arrangements can apply until the end of 2020, at the latest.

The Commission and the Member States are on track to finish the major part of the work on the electronic systems on time. In 2017 three of the seventeen systems were implemented and a first phase of another system was completed, all by their scheduled dates. In effect, close to eighty per cent of the work on the trans-European systems provided for under the Work Programme will be completed by that date but the last phases of development of IT systems are often the longest and therefore, while some systems will be completed by that date, others will only be part completed. Member States aim to have most elements of the three national systems in place by that date also. However, it has become clear that not all projects can be completed by that date.

There are many challenges in this work, unpredictable at the time the deadline was set up, for both the Commission and Member States, including the following:

- 2020 has always been considered an ambitious deadline, given the complexity of the task involved in completing seventeen interlinked electronic systems across the whole

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<sup>1</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) - OJ L 56, 10.10.2013, p.1.

<sup>2</sup> Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code (OJ L 99, 15.4.2016, p.6)

of the EU. When setting that deadline, it was anticipated that the rules supplementing and implementing the UCC (the UCC Delegated Regulation,<sup>3</sup> the UCC Implementing Regulation<sup>4</sup> and the UCC Transitional Delegated Regulation<sup>5</sup>) would be adopted very soon after the adoption of the UCC in 2013, so that their provisions could be taken into account in developing the IT systems. However, as it happened, discussions on took much longer than expected and the acts were only adopted in their final form more than two years behind schedule, in late 2015/early 2016. This delay meant a delay in producing the technical specifications for many of the electronic systems.

- Since the adoption of the Delegated Regulation and the Implementing Regulation, work is proceeding at an intensive pace on the modelling for the systems but work on data harmonisation in particular has been more challenging than anticipated. Harmonisation of the data provided by economic operators is crucial for the interoperability of the different UCC electronic systems, for a harmonised application of the legal rules and for cooperation with other public services active at the border. Harmonising the data in line with international data models such as that of the World Customs Organisation also ensures better linkages with third countries' IT systems and thus greatly facilitates trade. However, this work involves a much heavier than expected investment in terms of time and in financial terms in fully reprogramming some of the existing electronic systems. In the current situation of budget cuts, finding the resources necessary for this work has proved difficult.
- The Commission has always paid particularly close attention to the need for realistic timelines and to the costs and general impact of the proposed electronic changes on customs and trade. As the electronic systems are closely interlinked with each other, it is important to introduce them in the right order (sequencing) so as to ensure that interdependencies are respected and that the changes for administrations and trade are introduced in a structured and coherent manner.

For all of these reasons, it has become necessary to provide for a later date (2025) for full completion of work on some of the systems. This will ensure the smooth implementation by 2020 of the other systems and this will in turn facilitate the later implementation of the remaining systems in proper sequence. Half of the systems for which implementation is to be delayed already exist and are merely being upgraded under the UCC while the other half are new systems.

The systems to be postponed are, therefore, as follows:

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<sup>3</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 58, 29.12.2015, p.1).

<sup>4</sup> 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 of 9 October 2013 laying down the Union Customs Code (OJ L 58, 29.12.2015, p.558).

<sup>5</sup> Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council are regards transitional rule for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational (OJ 69, 15.3.2016, p.1).

- Upgrades for which the main technical challenge is the harmonisation of data i.e. the upgrade of the Import Control System (ICS), the New Computerised Transit System (NCTS) and the Automated Export System (AES) plus the export component of the national Special Procedures System; and
- Three new systems which are designed to apply innovative features of the code i.e. Centralised Clearance for import (CCI), Proof of Union Status (PoUS) and Guarantee Management (GUM).

The postponement to 2025 of the delivery date for these electronic systems conflicts with Article 278 of the Union Customs Code, which only allows the use of means for the exchange and storage of information other than the planned electronic systems until 2020. Therefore, the deadline in Article 278 must be extended in respect of the delayed systems. Furthermore, action must be taken quickly in order to ensure legal certainty; business and customs administrations would have serious problems if, by 2020, some of the electronic systems were not implemented and at the same time the law prohibited the continued transitional use of alternative arrangements.

As Member States and businesses need on average two years to make arrangements for each electronic system, the Commission has to provide legal certainty by 2018 about the applicability of transitional arrangements after 2020 up to 2025.

- **Consistency with existing policy provisions in the policy area**

The amendment to Article 278 of the Code is consistent with the calendar for IT planning in the Multi-Annual Strategic Plan (MASP) established in accordance with the Decision No 70/2008/EC of the European Parliament and of the Council on 15 January 2008 on a paperless environment for customs and trade<sup>6</sup>.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis is Article 33 of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under the exclusive competence of the EU according to Article 3(1)(a) of the Treaty on the Functioning of the European Union (TFEU).

- **Proportionality**

The proposal does not entail any new policy developments compared to the legislative act it intends to amend; it merely modifies a single provision in order to extend the deadline for the use of transitional measures. As Regulation (EC) No 952/2013 is a legal act of the EU, it can only be amended by way of an equivalent legal act. Member States cannot act individually.

- **Choice of the instrument**

In order to tackle the aforementioned problem, the Commission proposes to amend Article 278 of the Code so that the transitional arrangements for the exchange and storage of customs information (i.e. existing electronic and paper-based systems) can continue to be used after 2020 for the electronic systems that will not be implemented by 2020.

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<sup>6</sup> OJ L 23, 26.1.2008, p.21.

The proposed amendment would keep the deadline of 2020 in Article 278 but at the same time it would provide for an extended deadline of 2025 in relation to the aforementioned electronic systems that will not be operational by 2020.

### **3. STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- Stakeholder consultations**

The Commission has extensively consulted the Member States about the need for a more realistic timetable for the development of the electronic systems of the Union Customs Code and about the corresponding need for the continued applicability of transitional arrangements for the exchange and storage of customs information beyond the current deadline of 2020. In addition to some written and bilateral consultations, these issues were extensively discussed at Commission Expert Groups meetings on 31 March 2017 and on 29-30 June 2017. The Commission also sent Member States a detailed questionnaire to obtain information on their preferences regarding systems that should be delayed if any had to be delayed and draw up a new IT planning on the basis of the responses of Member States to that questionnaire.

The Commission also consulted the trade representatives in the forum of the expert group that gathers representatives from diverse trade associations, the [Trade Contact Group](#), at Plenary meetings on 27 April 2017 and 12 July 2017. Businesses need realistic timetables and agree that the deadline to use the transitional arrangements for the exchange and storage of customs information must be extended if the electronic systems are ready only after 2020.

- Impact assessment**

This initiative does not require an impact assessment because it does not concern a policy choice. It simply suggests extending the use of the transitional arrangements that are already provided for in the Union Customs Code, for an additional period of time. This extension will, in fact, ensure a smoother and less disruptive implementation of a policy choice contained in the Code, concerning the gradual shift to a complete use of electronic systems for interactions between economic operators and customs authorities, and among customs authorities, and the end of paper based procedures.

In addition, the Commission is preparing a report on the implementation to date of the Union Customs Code including its electronic systems, which will also be presented in early 2018.

### **4. BUDGETARY IMPLICATIONS**

[...]

### **5. OTHER ELEMENTS**

- Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will also carry out a more complete evaluation of the Code once the electronic systems are in place, so as to determine whether there are gaps or errors in the Code that need to be addressed by a more comprehensive proposal for amendment.

- **Detailed explanation of the specific provisions of the proposal**

In line with the legislative approach used for the current wording of Article 278, and for the UCC as a whole, the Commission proposes that the amended Article 278 will not name the electronic systems that are delayed. Instead the amendment will refer to the groups of legislative provisions that the electronic systems in question are designed to apply.

If adopted, the amended text will allow a smooth transition from the existing, mainly paper-based, systems to the new electronic environment foreseen in the Union Customs Code. The transitional arrangements for each of the electronic systems under development, and that would consequently continue to apply in the case of the delayed systems, are spelled out in detail in the UCC Transitional Delegated Regulation. The legal consequence of amending Article 278 of the Code in the sense described above would logically be that some of these transitional measures apply for a longer period of time. The most important ones can be summarised as follows:

- the electronic system to deal with the entry summary declaration, the transit procedure and the export control would continue to be the existing versions of ICS, NCTS and Export Control system;
- the paper T2L would continue to be endorsed by the customs authorities to be used as proof of Union status;
- Annex 9 of Transitional Delegated Regulation, instead of Annex B of Delegated Regulation, would set the applicable data requirements for declarations and notifications;
- existing paper-based Union transit procedures for rail, air or sea would continue to apply;
- paper documents may continue to be used to inform about the exit of the goods from the customs territory;
- the Member States involved in an authorisation for Centralised Clearance must cooperate, although they are also entitled to refuse the authorisation where granting it would create a disproportionate administrative burden; and
- the information on guarantees used in several Member States for purposes other than transit must be exchanged between Member States by email and must be stored in the Member States' national systems.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 33 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In line with the recognition in Decision No 70/2008/EC of the European Parliament and of the Council on 15 January 2008 on a paperless environment for customs and trade<sup>7</sup> of the importance of information and communication technologies for trade facilitation and effective customs controls, Article 6(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 November 2013 laying down the Union Customs Code<sup>8</sup> (the Code) establishes that all exchanges of information between customs authorities and between economic operators and customs authorities, and the storage of such information, is to be made using electronic systems;
- (2) Article 278 of the Code allows for the use of means of exchange and storage of information other than the electronic systems referred to in Article 6(1) of the Code, to the extent that the electronic systems are not yet operational, but only until 31 December 2020 at the latest;
- (3) Paragraph 1 of Article 16 of the Code requires that Member States cooperate with the Commission to develop, maintain and employ electronic systems for the exchange and the storage of customs information;
- (4) Articles 280 and 281 of the Code empowers the Commission to draw up a work programme relating to the development and deployment of the electronic systems referred to in Article 16(1) with a view to governing also the setting of transitional periods;
- (5) Based on the existing planning document aimed at creating a European electronic environment for customs, which is drawn up by the European Commission in partnership with Member States in accordance with Article 8(2) of Decision 70/2008/EC, Commission Implementing Decision (EU) 2016/578<sup>9</sup> (the Work

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<sup>7</sup> OJ L 23, 26.1.2008, p.21.

<sup>8</sup> OJ L 56, 10.10.2013, p.1.

<sup>9</sup> Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code (OJ L 99, 15.4.2016, p.6).

Programme) contains a list of seventeen electronic systems that the Member States (national systems) and the Member States and the Commission in close collaboration (trans-European systems) must develop for the application of the Code. The Work Programme also sets the latest day by which the trans-European systems must be operational in all Member States within the deadline of 31 December 2020 in Article 278 of the Code. The Member States must submit to the Commission their national project and migration plans for the national electronic systems or specific national components of trans-European projects;

- (6) There are many challenges in completing this work by 2020 for both the Commission and the Member States. First, harmonising the data elements on the basis of internationally accepted data models as required by Article 280(1)(a) of the Code demands in some cases a full reprogramming of existing electronic systems, and this in turn requires heavy investments both in financial terms and in terms of time. In the current situation of budget cuts and the enormity of the reprogramming work, that was not necessarily predictable in 2013, finding adequate resources to develop these projects is proving difficult. Second, as the electronic systems are closely interlinked with each other, introducing them in the right order (sequencing) is important to ensure that interdependencies are respected and that the changes for administrations and trade are introduced in a structured and coherent manner so delays with one system may require delays in others. Third, some of the legal provisions that the electronic systems are designed to apply were agreed and adopted more than two years after the adoption of the 2020 deadline, because the Code (including the deadline in Article 278) was adopted in 2013 while the rules supplementing<sup>10</sup> and implementing it<sup>11</sup> were adopted only in late 2015. A proper design of the electronic systems was therefore impossible until 2016, when the legal rules were in place;
- (7) The Commission has extensively consulted the Member States about the need for a more realistic timetable for the development of the electronic systems of the Code, including by distributing a very detailed survey with questions about planning, to which all the Member States replied. The Commission has also consulted trade stakeholders. Businesses need realistic timetables and confirm that on average they need two years to properly arrange for the use of each new (or upgraded) electronic system;
- (8) On the basis of this information, it has become evident that, while some systems will be completed by the 2020 deadline others will only be part completed. In effect, about eighty per cent of the work on the electronic systems provided for under the Work Programme will be completed by that date but the last phases of development of IT systems are often the longest. It is in year 2025 that the seventeen electronic systems of the Work Programme will be operational.

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<sup>10</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 58, 29.12.2015, p.1) and Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council are regards transitional rule for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational (OJ 69, 15.3.2016, p.1)

<sup>11</sup> 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 of 9 October 2013 laying down the Union Customs Code (OJ L 58, 29.12.2015, p.558).

- (9) The Member States and the Commission have agreed that they need to continue working after 31 December 2020 on two groups of systems. A first group is formed by the electronic systems that must be upgraded, and for which the main technical challenge is the harmonisation of the data. The trans-European systems in this group are closely interconnected among themselves and with the national declaration and notification systems. The systems in this first group are the Import Control System (ICS), the New Computerised Transit System (NCTS) and the Automated Export System (AES) plus the export component of the national Special Procedures System. The second group of systems on which the Member States and the Commission need to work after 2020 is formed by three new electronic systems which are designed to apply innovative features of the Code, namely, the possibility to declare the goods in a Member State different to that of their presentation (centralised clearance), the management of the compulsory guarantees and the elimination of paper to prove the union status of goods. Three trans-European systems belong to this group: Centralised Clearance for Import (CCI), Guarantees Management (GUM) and Proof of Union Status (PoU). These three systems are also interlinked with the national declaration systems. The new planning in MASP (allowing MS that want to go faster?);
- (10) In this new scenario of extended deadlines for the completion of some of the IT projects, there is a corresponding need for the continued applicability of the transitional arrangements for the exchange and storage of customs information beyond the current deadline of 31 December 2020 and therefore a need to amend Article 278 of the Code;
- (11) The amended Article 278 should preserve 31 December 2020 as the general deadline for the use of means for the exchange and storage of information other than the electronic data-processing techniques referred to in Article 6(1) of the Code (i.e. for the use of transitional measures). However, in addition, in the light of the new planning for the development of some of the electronic systems of the Code, the amended Article 278 should establish two derogations from the general deadline, both allowing for an extended use of transitional measures until 31 December 2025, at the latest, where the electronic systems which are necessary for the application of certain provisions of the Code are not yet upgraded or deployed;
- (12) In line with the new planning, the electronic systems that need to be upgraded before 31 December 2025 are the trans-European systems and the national declaration and notification systems that are designed for applying the provisions of the Code on entry summary declaration (Articles 46 and 127 to 132), on transit (Articles 210(a), 215(2) and 226 to 236) and on exit of goods from the customs territory of the Union under the export or a special procedure (Articles 210(c) and (d), 215 and 263 to 276); and the new electronic systems that need to be deployed before 31 December 2025 are the trans-European systems and the national declaration systems designed for applying the provisions of the Code on guarantees (Articles 89 to 100), on customs status of goods (Article 153 to 157) and on centralised clearance (Article 179 to 181);
- (13) Pursuant to Article 279 of the Code, the Commission is empowered to adopt delegated provisions establishing the applicable means of exchange and storage of information for the period until a specific electronic system of the Code is in place (transitional measures). The legal consequence of amending Article 278 of the Code in the sense described above would logically be that some of these transitional measures apply for a longer period of time;

HAVE ADOPTED THIS REGULATION:

*Article 1*

Article 278 of Regulation (EU) No 952/2013<sup>12</sup> is replaced by the following:

*"Article 278*

**Transitional measures**

1. Means for the exchange and storage of information, other than the electronic data-processing techniques referred to in Article 6(1), may be used on a transitional basis, until 31 December 2020 at the latest, where the electronic systems which are necessary for the application of the relevant provisions of the Code are not yet operational.
2. By way of derogation from paragraph (1), means other than the electronic data-processing techniques referred to in Article 6(1) may be used on a transitional basis, until 31 December 2025 at the latest, where the electronic systems which are necessary for the application of the following provisions of the Code are not yet upgraded:
  - (a) Articles 46 and 127 to 132 (entry summary declaration);
  - (b) Articles 210(a), 215(2) and 226 to 236 (transit); and
  - (c) Articles 210(c) and (d), 215 and 263 to 276 (as applicable to goods taken out of the customs territory of the Union).
3. By way of derogation from paragraph (1), means other than the electronic data-processing techniques referred to in Article 6(1), may be used on a transitional basis, until 31 December 2025 at the latest, where the electronic systems which are necessary for the application of the following provisions of the Code are not yet deployed:
  - (d) Articles 89 to 100 (guarantee for a potential or existing customs debt);
  - (e) Article 153 to 157 (customs status of goods); and
  - (f) Article 179 to 181 (centralised clearance)."

*Article 2*

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

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

Done at Brussels,

*For the European Parliament  
The President*

*For the Council  
The President*

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<sup>12</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 November 2013 laying down the Union Customs Code (OJ L 56, 10.10.2013, p.1).