



Brussels, 10.4.2013
COM(2013) 193 final

2013/0104 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EC) No 450/2008 laying down the Community Customs Code
(Modernised Customs Code) as regards the date of its application

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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)¹ aimed at the adaptation of customs legislation to fit, but also to govern, the electronic environment for customs and trade. This provided an opportunity to carry out a major overhaul of the customs rules in order to make them simpler and better structured.

That Regulation entered into force on 24 June 2008, but becomes applicable, in accordance with its Article 188(2), only once its implementing provisions are applicable, and on 24 June 2013 at the latest.

On 20 February 2012, the Commission submitted to the European Parliament and the Council a proposal² for a Regulation laying down the Union Customs Code, as a recast of Regulation (EC) No 450/2008, to repeal and replace it before its scheduled date of application, due to the following needs:

- to postpone the date of application of Regulation (EC) No 450/2008 so as to give administrations and economic operators adequate time to undertake the necessary investments and ensure a phased, binding but realistic implementation of electronic processes;
- to align Regulation (EC) No 450/2008 on the requirements of the Lisbon Treaty, as regards the empowerment to be given to the Commission to adopt either delegated or implementing acts, in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union;
- to adjust some provisions of Regulation (EC) No 450/2008 that have proved difficult to implement.

However, while the institutions are close to a political agreement on the final text of the Regulation, the ordinary legislative procedure for that recast could not be completed in time for adoption and entry into force of the recast Regulation before the deadline of 24 June 2013.

In the absence of such adoption, the main adverse consequences would be the following:

- Regulation (EC) No 450/2008 would become applicable on 24 June 2013 without any Commission acts in force to support that application and without the necessary IT developments to ensure compliance with the principle of using electronic data-processing techniques as laid down in its Article 5(1);
- Regulation (EEC) No 2913/92 (the Community Customs Code, currently in force) would, inter alia, be repealed and that would generate legal uncertainty about the customs legislation actually applicable and be an obstacle to maintaining a comprehensive and consistent Union legal framework for customs matters pending the adoption of the proposed Regulation.

For these reasons and as a contingency plan to prevent serious difficulties with the Union customs legal framework, the Commission considers that the ultimate date of application of Regulation (EC) No 450/2008, as laid down in the second subparagraph of its Article 188(2), may have to be postponed to provide the legislature with adequate time to complete the

¹ OJ L 145, 4.6.2008, p. 1.

² COM(2012) 64 final.

process of adoption of the Union Customs Code. The new date of application considered appropriate for that purpose would be 1.11.2013.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The proposal does not affect the substance of Regulation (EC) No 450/2008 but only aims at postponing its date of application, to take into account the time strictly needed for completion by the European Parliament and the Council of the legislative procedure to repeal and replace it by a new Regulation laying down the Union Customs Code.

Therefore, it warrants neither the involvement of parties other than the European Parliament and the Council nor an impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposal consists in amending the second subparagraph of Article 188(2) of Regulation (EC) No 450/2008 to replace the date of 24 June 2013 by the date of 1.11.2013.

Its legal bases shall be the same ones as govern the amended Regulation, taking due account of the Treaty of Lisbon: Articles 33, 114 and 207 of the Treaty on the Functioning of the European Union (TFEU). Due to the fact that it governs the adoption of non-legislative acts, Article 31 TFEU can no longer serve as a legal basis for a legislative act like the proposed Regulation. Such reference is in any case not required, considering the scope and content of that Regulation.

4. BUDGETARY IMPLICATION

None

5. OPTIONAL ELEMENTS

None

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amending Regulation (EC) No 450/2008 laying down the Community Customs Code (Modernised Customs Code) as regards the date of its application

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 Articles 33, 114 and 207 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) 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)⁴ entered into force on 24 June 2008, but is to be applicable, in accordance with its Article 188(2), only once its implementing provisions are applicable, and on 24 June 2013 at the latest. Regulation (EC) No 450/2008 is intended to replace Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁵.
- (2) On 20 February 2012, the Commission submitted to the European Parliament and the Council a proposal⁶ for a Regulation laying down the Union Customs Code, in the form of a recast of Regulation (EC) No 450/2008, to replace it before its ultimate date of application. However, the ordinary legislative procedure cannot be completed in time for adoption of that proposed Regulation and consequently its entry into force before the ultimate deadline of 24 June 2013. As a consequence, in the absence of any corrective legislative action, Regulation (EC) No 450/2008 would apply on that date and Regulation (EEC) No 2913/92 would be repealed. That would generate legal uncertainty about the customs legislation actually applicable and be an obstacle to maintaining a comprehensive and consistent Union legal framework for customs matters pending the adoption of the proposed Regulation.
- (3) To prevent such serious difficulties with the customs legislation of the Union and provide the legislature with adequate time to complete the process of adoption of the Union Customs Code, the ultimate date of application of Regulation (EC) No 450/2008, as laid down in the second subparagraph of its Article 188(2), should be

³ OJ C , , p. .

⁴ OJ L 145, 4.6.2008, p. 1.

⁵ OJ L 302, 19.10.1992, p. 1.

⁶ COM(2012) 64 final.

postponed. The new date of application considered appropriate for that purpose is 1.11.2013,

HAVE ADOPTED THIS REGULATION:

Article 1

In the second subparagraph of Article 188(2) of Regulation (EC) No 450/2008, the date '24 June 2013' is replaced by '1.11.2013'.

Article 2

This Regulation shall enter into force on the first 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