



Service Public  
Fédéral  
**FINANCES**

DOUANES ET ACCISES

# NOTE D'INFORMATION RELATIVE AUX NOTES INTRODUCTIVES 3 ET 6 DE L'ANNEXE B DU CDU DA

D.D. 020.890 DU 12/09/2024

DEPARTEMENT CENTRAL LEGISLATION  
LEGISLATION DOUANE

## **1. L'objectif des notes introductives**

Le chapitre 1<sup>er</sup> du Titre I de l'annexe B des actes délégués du Code des douanes de l'Union (appelé « CDU DA ») contient des notes introductives concernant le tableau des exigences en matière de données qui se trouve au chapitre 3 de ce Titre I.

Deux de ces notes (les notes 3 et 6) visent à clarifier dans quelle mesure certaines données doivent être fournies par les opérateurs économiques aux autorités douanières.

Les notes 3 et 6 sont les suivantes :

- (3) *Les symboles «A», «B» ou «C» mentionnés au chapitre 2, section 3 ci-dessous ne préjugent pas du fait que certaines données ne sont collectées que lorsque les circonstances le justifient. Par exemple, l'unité supplémentaire collectée (Statut «A») ne le sera que lorsque la législation de l'Union telle que publiée dans le TARIC le prévoit.*
- (6) *Sans affecter de quelque manière les obligations de fournir des données en vertu de la présente annexe et sans préjudice de l'article 15 du code, le contenu des données transmises aux douanes pour une exigence donnée sera fondé sur les informations dont a connaissance l'opérateur économique qui les communique au moment où elles sont fournies aux douanes.*

## **2. Problématique et demande de clarification à la Commission européenne**

Le Service Législation douanière du Département central Législation étant préoccupé par l'utilisation (et surtout un éventuel abus) de ces deux notes introductives, la problématique a été relayée à la Commission européenne.

Les clarifications nécessaires ont été demandées par le biais d'un document non-officiel, dont le texte intégral est reproduit ci-dessous :

*"The Belgian Customs Administration would like to receive some clarifications on the use of the introductory notes 3 and 6 of Annex B-DA.*

### **Introductory note 3**

*This note reads as follows:*

*"The 'A', 'B' or 'C' symbols listed in Chapter 2, section 3 below have no bearing on the fact that certain data is collected only where circumstances warrant it. For example, the supplementary units (status 'A') will only be collected where required by the Union legislation, as published in TARIC."*

*The example given in this note with regard to D.E. 18 02 000 000 (Supplementary units) as well as the one given in the 'EUCDM Guidance document' concerning D.E. 12 01 000 000 (Previous document) are obvious and will not pose any real problems.*

*However, it is still not clear to us for which other data elements this note can be used. We already asked this question in the framework of the review of the 'EUCDM Guidance document' and the Commission replied that it is not up to the Member States to define the use of this note and to decide for which data elements it can be used. The Commission further explained that it depends on the practical conditions but what should be understood by 'practical conditions'? Conditions in which a declarant claims that he or she cannot provide certain data or certain information?*

*Lacking an overview for which data elements introductory note 3 can be used, we fear that some declarants will make little effort to provide the necessary data and will use that note whenever it suits them. This will lead to a misuse rather than a correct use of introductory note 3.*

*Not only would that be an infringement of the provisions of article 15 of the UCC but it would also weigh heavily upon the performance of the electronic declaration systems: a data element is mandatory or optional and if a mandatory element would have been considered to be optional in some situations, then these situations must be clearly defined and implemented in the electronic systems. If that would not be possible, then the risk of getting error messages will be unavoidable.*

### **Introductory note 6**

*This note states:*

*“Without affecting in any way the obligations to provide data according to this Annex and without prejudice to Article 15 of the Code, the content of the data provided to customs for a given requirement will be based on the information as it is known by the economic operator that provides it at the time it is provided to Customs.”*

*The Commission mentioned the use of introductory note 6 in the working document on the declaration of the mass in simplified declarations for liquid bulk goods.*

*Notwithstanding the fact that this note is more specific than introductory note 3, it is not clear to us either for which data elements this note can be used.*

*Furthermore, economic operators might be inclined to use this note rather loosely and randomly, thus providing incomplete and/or inaccurate information. In that way, they would not fulfil their obligations in accordance with the provisions of Article 15 of the UCC.*

### **Conclusion**

*Without a more defined use of introductory notes 3 and 6, there is a potential risk that both notes will provide a loophole for certain economic operators, with which they would be able, on the one hand, to avoid providing any information (introductory note 3) or, on the other hand, to avoid providing accurate and complete information (introductory note 6). In other words, they would not be able to meet the requirements of Article 15 of the UCC.*

*Belgium would very much like to hear the point of view of the Commission and of the other Member States on this matter.”*

Ce document non-officiel a été présenté par la Belgique à la réunion du *Customs Expert Group on Data Integration and Harmonisation* (CEG-DIH) du 28 septembre 2023.

### **3. Position de la Commission européenne**

Dans le rapport de la réunion susmentionnée, la Commission européenne a exprimé sa position sur le document non-officiel belge comme suit :

*“COM informed that BE raised some concerns on the Introductory Notes 3 and 6 to Annex B, particularly to what limits the provision of information is not needed where circumstances do not warrant it. Although COM gave two examples where information is not required (the*

supplementary units in D.E. 18 02 000 000 and the previous document in D.E. 12 01 000 000), it acknowledged that discussions repeatedly took place in relation to the aforesaid introductory notes. COM believed these introductory notes could not be disposed of and invited BE to provide further details on their inquiry.

BE stated that Introductory Note 3 needs clear delineation; otherwise, the declarants would not provide any information, leading to abuse or misuse of the introductory note and an impact on the systems. Similarly, Introductory Note 6 necessitates more precise wording, or else businesses might have an arbitrary approach and possibly write the wrong information in the declaration; therefore, Article 15 would not be fulfilled. NL agreed with COM that both introductory notes are necessary; however, the D.Es. in question should be investigated, and if the EOs could use the introductory notes as a backdoor. EEA (European Express Association) concurred with COM and NL that the two introductory notes should not be removed as they are helpful in many situations. However, the option of not using the introductory notes in other situations should be examined. Still, adjustments should be made while considering how fast the international trade is changing. COM subscribed to all the aforesaid positions and proposed continuously investigating the under-discussion issue in collaboration with all the delegates to gain insight into the practical experiences and anticipate any problems. Lastly, COM would share the document from BE and request written comments."

L'utilisation des notes introductives 3 et 6 fera donc l'objet d'un examen plus approfondi de la part de la Commission afin de mieux les délimiter et d'éviter les abus.

Par conséquent, il n'est pas du ressort des autorités douanières de déterminer à quels éléments de données les notes introductives 3 et 6 peuvent s'appliquer. Toutefois, en l'absence de précisions et de clarifications supplémentaires de la part de la Commission, les autorités douanières se trouvent dans une position difficile, d'autant plus que ces notes introductives ne peuvent pas être utilisées pour chaque élément de données.