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COMMUNICATION FROM THE COMMISSION

**COMMISSION ACTION TO COUNTER  
TRANSIT FRAUD**

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### **I. INTRODUCTION**

Two categories of customs transit procedure exist: autonomous Community procedures allowing goods to move within the customs territory of the Community, and contractual procedures which enable goods to move between that territory and the customs territories of the other contracting parties - respectively the common transit procedure, under a Convention with the EFTA countries, and the TIR regime, under the TIR Convention which has 57 contracting parties. In all cases use of the transit procedure means goods avoid the import duties, taxes and other measures to which these cross-border movements would otherwise give rise. They thus offer firms engaged in international trade a facility which reduces their administrative burden and financial outgoings.

In return for the suspension of impositions, firms authorized to use the transit procedures undertake to abide by certain rules and pay any duties or charges for which they might subsequently incur liability. The undertakings are backed by the provision of financial security (guarantees) and various control procedures; these in no way affect the possibility of criminal proceedings, which at this stage are a matter for national authorities.

In its communication of 29 March 1995 entitled "Fraud in the transit procedure, solutions foreseen and perspectives for the future",<sup>1</sup> the Commission reported cases of transit fraud to the Council and Parliament and sought their backing for its steps, particularly concerning the computerization of transit.

This memo takes stock of the measures outlined in that communication and details how -without sacrificing any of the vital economic benefits that the transit arrangements offer Europe's traders - fraud is to be tackled in the immediate future.

The Commission also underlines the general guidelines on tackling fraud adopted as part of its 1996 work programme<sup>2</sup>. These take particular account of the report by the Court of Auditors on the 1994 financial year<sup>3</sup> and the impact of fraud, notably in terms of the Member States' respective contributions to the Community budget and the transfer to the European taxpayer of the perpetrator's debt. Transit fraud translates into a loss of income in the form of traditional own resources (customs duties, agricultural levies and the sugar levy) and VAT, which has to be

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<sup>1</sup> COM (95) 108 final.

<sup>2</sup> COM (96) 17/2.

<sup>3</sup> OJ No C 303, 14.11.1995.

offset by increased contributions from the Member States and their taxpayers in the shape of the GNP resource, for which there is a special scale.

It also notes the setting-up by Parliament of a temporary committee of enquiry on Community transit, which illustrates that institution's interest in the measures taken by the Commission and the Member States to resolve the crisis sweeping the transit procedure.

Even though the Commission-coordinated stepping-up of controls by the Member States has given a clearer picture of the true scale of transit fraud, the existing provisions on fraud and cooperation between the Member States, including those on the recovery of traditional own resources, are not yet producing the desired results.

The Commission needs to examine how far the present crisis can be ascribed to the shortcomings of these instruments and how far to a failure by the Member States to make proper or full use of their potential. In either case, measures will have to be taken to remedy the situation.

While summarizing the measures already under way (Part II A), this memo is essentially concerned with anti-fraud measures for which proposals are either already on the table or pending (Table II B). Computerization, which has both operational and legislative aspects, hinges on the provision of physical and financial resources that are dealt with separately in Table III. Difficulties inherent in the recovery of own resources are set out in Table IV. Lastly, the conclusion calls for immediate and firm commitments from the Commission and outlines the prospects for measures in the longer term.

## II. COMMISSION MEASURES

In response to an increase in the volume of transit fraud, the Commission has pressed on with and tightened up the improvements to the Community and international rules in force and the application of the relevant provisions by customs officers on the ground.

### A. Measures already taken

At Community level a number of legislative measures (Community Customs Code<sup>4</sup> and its Implementing Provisions<sup>5</sup>) and administrative steps (in the form of administrative arrangements) have been adopted to improve and strengthen existing provisions or introduce the systems required to tackle fraud more effectively. The corresponding changes have been made to the Convention on Common Transit. Improvements have been made to the legal and administrative framework of the TIR Convention of 14 November 1975 by a resolution of 3 March 1995.<sup>6</sup>

The measures adopted so far can be found in the table in Annex 1 to this memo.

<sup>4</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992, OJ No L 302, 19.10.1992.

<sup>5</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993, OJ No L 253, 11.10.1993.

<sup>6</sup> See Council Decision No 95/285/EC of 25 July 1995, OJ No L 181, 1.8.1995.

Of these measures, the following call for special comment:

- reinforcing the comprehensive guarantee system (points 1 and 2 of Annex 1)

Measures enabling the comprehensive guarantee to be increased or banned have now been extended to all T1 operations. They used to be applicable only to T1 operations involving consignments from non-member countries; now they cover, for example, exports of agricultural products eligible for refunds.

- the early-warning system (point 4 of Annex 1)

This system involves the exchange of SCENT and/or fax messages by customs authorities concerned in a transit operation involving fraud-sensitive products. The main advantage of the system is that the office of destination can be given notice of the arrival of a consignment covered by a T document and can take rapid action if that consignment is not presented within the prescribed period. It also applies to common transit and TIR Convention operations.

- extension of the scope of the prohibition on the use of comprehensive guarantees (point 6 of Annex 1)

This measure allows comprehensive guarantees to be temporarily banned without waiting for a specific mutual assistance report on the goods in question, which often arrives long after the fraud has been detected. The measure is now more flexible and has acquired a "preventive" dimension to go with the "curative" one.

## **B. Planned measures**

Some proposals are already in the pipeline, notably concerning the methods for calculating comprehensive guarantees, and other improvements are being studied in the course of the comprehensive in-depth review of the transit provisions launched by a Commission task force last December.

These measures can be found in the table in Annex 2 to this memo.

Of these measures, the following call for special comment:

- inclusion in the common transit framework of the measures adopted by the Community in respect of guarantees (points 1 and 2 of Annex 2)

To maintain the strict alignment between Community and common transit, the Community provisions are incorporated in proposals for matching amendments to the Convention on common transit concluded by the Community with the EFTA countries in 1987.

The adoption of amendments to the common transit Convention requires the consent of all contracting parties. If even one contracting party digs in its heels, the measure cannot be introduced. In terms of fighting fraud and defending the financial interests of the Community, this can reduce the effectiveness of the corresponding measures adopted at Community level (e.g. the banning of comprehensive guarantee for sensitive products).

calculation of the comprehensive guarantee (point 3 of Annex 2)

Setting a 100% comprehensive guarantee (rather than the present 30% upwards) should better secure the duties and taxes at stake, assuming that the Member States rigorously check the veracity of the information on which the calculation is based.

Where several certificates are issued on the strength of a single comprehensive guarantee, the aggregate amount covered by these certificates must not exceed the sum of the guarantee. To make sure that this provision is being properly enforced, special control instruments are needed, something the computerization of transit can offer.

introduction of a legal obligation to establish a time-limit for the presentation of goods at destination commensurate with distance to be covered (point 4 of Annex 2)

Incorporating this obligation in the legislation will draw the Member States' attention to the vital need to limit the scope for misuse of the procedure and show the importance attached to the issue by the Commission.

harmonizing time-limits for notifying the principal and the guarantor (point 7 of Annex 2)

As the law stands, the time-limits for notifying the principal and the guarantor of their liability for a debt differ nor are they aligned as to the date of expiry of the debt. Harmonizing the time-limits for notifying the principal and the guarantor at three years offers the advantage of limiting the danger of a guarantor being released from his obligations in the event of a fraud being detected more than twelve months after a transit document's validation. However, extending the period of the guarantor's liability (to three years) for every transit document issued could appreciably increase the principals' costs or lead guarantors to refuse to cover the sums in question for so long a period.

the period available to the principal to put his case in the event of a transit document not being discharged (point 8 of Annex 2)

This three-month period is intended to allow the principal to show that there were no irregularities or, failing that, to show where the irregularities took place. There is no reason to allow this period in situations where fraud - and the place it occurred - has been detected and proven. In such circumstances the principal is inherently unable to show the regularity of the operation.

- the exclusion of sensitive goods from the simplified procedures (point 10 of Annex 2)

The application of certain simplified transit procedures to sensitive goods may increase the risk of fraud. It is therefore necessary, indeed imperative, to make sure that the restrictions applied to the normal procedure are also applied to certain simplified transit procedures.

- revision of the TIR Convention (point 11 of Annex 2)

An expert working party has already produced a report that is to be examined by the ECE (TIR management committee and WP 30) in Geneva, but we would emphasize the difficulty of effectively reinforcing the protection of Community interests during the negotiation of a Convention with 57 contracting parties.

### III. COMPUTERIZATION OF TRANSIT

With the Member States and the EFTA countries, the Commission has started computerizing transit for three main reasons:

- to make the procedure more efficient;
- to make transit operations faster and safer, in the interest of traders especially;
- to increase the detection and prevention of fraud.

If all goes to schedule, computerized transit could be operational in all Member States and EFTA countries some time in 1998. At the present stage of the project's development, however, compliance with this schedule depends almost entirely on the readiness of the Member States and the EFTA countries to honour their commitments and provide the funds needed for the project. This also applies to the prospective parties to the Convention on Common Transit, Hungary, the Czech Republic, Slovakia and Poland.

We have to make sure that the countries concerned actually commit the funds needed and, if need be, consider additional Community funding instruments, in line with the Council resolution of 23 November last year on the computerization of the transit procedures.<sup>7</sup> We would also draw the Commission's attention to the need to secure and step up internal financing of the transit computerization project which currently comes from two limited sources: the IDA (subcontracting) programme and the departmental operating budget.

The cost of computerization was put by the 1994 feasibility study at ECU 23 million over 5 years (ECU 10 million from the Commission and ECU 13 million from the Member States) compared with the loss to fraud of more than ECU 750 million in duties and taxes evaded since 1990.

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<sup>7</sup> See OJ No C 327, 7.12.1995.

Even if computerization does not totally eliminate fraud, costs ought to be recovered very quickly (it is reckoned that introduction of the system will produce financial gains of ECU 1 200 million over five years). The cost-benefit analysis currently under way suggests an even more favourable ratio.

#### **IV. IMPROVED RECOVERY OF OWN RESOURCES**

1. The Commission departments responsible for supervising own resources have noted a shortfall in recovery and therefore in the provision of own resources by the Member States.
2. Among the apparent reasons for the Member States' shortcomings in the matter of recovery, the following are worth mentioning:
  - (a) the reluctance of the Member States to take immediate and direct action against the principal where several debtors (fraudster, carrier etc.) are jointly liable but not easily identifiable; the Member States also tend not to act against debtors other than the principal, even though joint liability increases the scope for recovery;
  - (b) the lack of homogenous administrative procedures and arrangements for effectively coordinating recovery proceedings where several debtor in different Member States are jointly liable for a debt or where Member States dispute their responsibility for recovery;
  - (c) the late transmission of the information required by the offices responsible for recovering duties where the irregularity is the subject of enquiries by investigators who invoke privilege to avoid divulging information before enquiries are definitively closed;
  - (d) the shortcomings of the competent authorities in administering the transit procedure (failure to calculate the comprehensive guarantee properly, not notifying the guarantor within twelve months that a transit document has not been discharged, etc.).
3. Everything possible will be done, notably in the framework of the Customs 2000 programme, to ensure that the Member States enforce the transit legislation properly.
4. Community law has devolved to the Member States primary responsibility for recovering own resources. Article 17(2) of Regulation (EEC) No 1552/89 only dispenses a Member State from the obligation to transfer traditional own resources to the Community where, in spite of every endeavour, recovery has proved impossible. Where Member States are culpably negligent in their failure to recover debts, they should be subject to stiffer financial sanctions.

## V. CONCLUSION

The Commission should resolutely press on with the special measures it has already launched, shouldering its responsibilities to the full. The short- and medium-term measures that it must adopt to fight fraud more effectively are set out in Annex 2 to this memo. If they are to succeed, it is clearly essential that Member States cooperate and shoulder their responsibilities, too. Similarly, traders involved in transit have a pivotal role to play here.

In the light of the above:

Where Member States or partner countries block the proposals put forward for the sound management of the procedure, the Commission will in principle use all the options available to it under Community law (Notably the procedure known as "the safety net procedure" - Art. 249 paragraph 3, b and c of Regulation 2913/92 establishing the customs code - which sets out that if the measure proposed by the Commission is not in accordance with the opinion of the Committee or if in the absence of an opinion, the proposal is submitted to Council which acts by qualified majority; if within three months from the date of referral the Council has not acted, the measure is adopted by the Commission.) or agreements (reducing the advantages enjoyed under the conventions by those failing in their responsibilities to their transit partners for example by the introduction at ).

The transit computerization project is of key importance. All possible steps will be taken, particularly in terms of funding, to stave off any problem that might jeopardize the system's entry into force in 1998 and the considerable benefits it offers in terms of combating fraud.

Rapid adoption of the Customs 2000 programme is a priority as it would help set up a solid legal basis for coordinated steps aimed at ensuring proper application of customs legislation and improving mutual assistance and cooperation, particularly in the fight against fraud. Pending adoption of the programme, it is essential that Member States participate fully in the pilot schemes currently under way.

In the field of debt recovery, thought could be given to measures to make mutual assistance under Directive 76/308/EEC more effective. Note, however, that this procedure is not just administrative, it is a judicial matter covered by the third pillar, which means that no substantial improvement is likely in the near future.

The Commission has launched a study on the national debt-recovery procedures for customs duties and agricultural levies; the draft Customs 2000 decision also provides for a report on the Member States' legal provisions and the difficulties facing their officials.

Traders involved in transit, and in particular those acting as principals, must also be made more aware of the risks they assume and the scope of their liability, most obviously the fact that they are the main potential debtor for Community own resources in the transit procedure.



With a view to maintaining some balance between the economic benefits offered by the transit procedure and the measures necessary for its proper application, and in order to ensure that traders who respect the rules are not unduly penalized by the higher guarantees, the Commission could recommend and foster the establishment of a supporting measure in the form of an optional insurance scheme, ideally at Community level. This could be set up by the traders themselves, if need be within a framework to be determined by the Member States, this matter being outside the province of the Community. This insurance scheme could pay debts arising from the failure to discharge a transit operation.

Likewise, and also with a view to helping honest operators accomplish import formalities, the Commission could consider clarifying the conditions in which the Member States can grant them payment facilities (by instalments) under the Community Customs Code.

**ANNEX 1 : MEASURES ALREADY TAKEN**

Description Measures marked with an asterisk are the subject of comments under II A	Type Legislative Administrative Operational	Scope D = Payment of Debt P = Prevention C = Controls	Legal framework	Current situation	Date of application
1 Option of forbidding use of comprehensive guarantees for sensitive products - extension to all T1 operations (matched in common transit) *	L	D	CCIP Art. 360 (Art. 34a of Appendix II to the Convention on common transit)	Reg. 3254/94 (Decision 3/94)	1 January 1995
2 Increase in the comprehensive guarantee for sensitive products - extension to all T1 operations (matched in common transit) *	L	D	CCIP Art. 361 (Art. 34b of Appendix II to the Convention on common transit)	Reg. 3254/94 (Decision 3/94)	1 January 1995
3 Increase in the flat-rate guarantee for sensitive products - extension to consignments where the comprehensive guarantee has been forbidden or increased (matched in common transit)	L	D	CCIP Art. 368 (Art. 41 of Appendix II to the Convention on common transit)	Reg. 3254/94 (Decision 3/94)	1 January 1995
4 Introduction of an early-warning system for sensitive products in transit *	A	P/C	Administrative arrangement		1 September 1992
5 Limiting the period for presenting the T document and consignments of sensitive products at destination to that strictly necessary for transport	A	P/C	Administrative arrangement		20 Sept. 1994
6 Making the procedure for forbidding the comprehensive guarantee for sensitive products more flexible and abolishing the measure increasing that guarantee *	L	D	CCIP Art. 362	Adopted by the Customs Code Committee on 22 December 1995	CCIP amendment February 1996

7 Introduction of selection criteria for traders wishing to use a comprehensive guarantee	L	D/P	CCIP Art. 360	Adopted by the Customs Code Committee on 22 December 1995	CCIP amendment February 1996
8 Giving the office of departure the option of laying down the routes to be used for transit operations involving sensitive goods	L	C/P	CCIP Art. 348	Adopted by the Customs Code Committee on 22 December 1995	CCIP amendment February 1996
9 Forbidding any change in the office of destination for sensitive products	L	C/P	CCIP Art. 356	Adopted by the Customs Code Committee on 22 December 1995	CCIP amendment February 1996
10 Accelerated procedure for discharging T documents in the case of sensitive goods	L	C/P	CCIP Art. 362a	Adopted by the Customs Code Committee on 22 December 1995	CCIP amendment February 1996
11 Introduction of short-term measures to improve the working of the TIR arrangements, notably the introduction of accelerated discharge and investigation procedures for sensitive goods	A	C/P	Resolution No 49 adopted by WP 30 in Geneva on 3 March 1995 and accepted by the Community via a Council decision of 24 July 1995 (OJ No L 181, 1.8.1995)		Applied by Member States since August 1995
12 Controlling access to the TIR arrangements and excluding certain persons from access to them	L	P	CCIP Art. 457a applying Article 38 of the TIR Convention	Adopted by the Customs Code Committee on 26 September 1995	CCIP amendment February 1996

13 Administrative cooperation on TIR between customs administrations and guaranteeing associations (transmission by customs of information concerning TIR carnets that have arrived at destination)	A	C	Recommendation of 20 October 1995 by the TIR management committee	Under way in the Member States	Early 1996
14 Application of the measure forbidding use of the comprehensive guarantee for sensitive products	L	D	Commission decisions of 28 Nov. and 20 Dec. 1995	Decision to be communicated to all Member States by Spain and Germany	Application from February and March 1996

**ANNEX 2 : PLANNED MEASURES**

Description Measures marked with an asterisk are the subject of comments under II B	Type Legislative Administrative Operational	Scope D = Payment of Debt P = Prevention C = Controls	Legal framework	Current situation	Date of application
1 Adoption of the measures mentioned in points 6, 7, 8, 9 and 10 of Annex 1 in EC-EFTA common transit *	L	D/P/C	Appendices I and II to the Convention on common transit	Draft ready	Draft to be examined by EC-EFTA working party on 20 February 1996
2 Adoption of the measures mentioned in point 14 of Annex 1 in EC-EFTA common transit *	L	D	Art. 34a of Appendix II to the Convention on common transit	Draft ready Opposition from Switzerland - Negotiations under way	Draft to be examined by EC-EFTA working party on 20 February 1996. Decision to be taken by Joint Committee using the accelerated written procedure.

3 Setting the comprehensive guarantee at 100% of the duties and taxes at stake and limiting the sum covered by each copy of the guarantee certificate *	L	D	CCIP Art. 360	Draft ready	Draft to be examined by Customs Code Committee on 19 February 1996
4 Obligation for the office of departure to reduce the time limit for presenting the T document and the consignment at destination in the case of sensitive goods *	L	P C	CCIP Art. 348	To do	Examination by Transit Task Force may result in a Commission proposal this year
5 Stepping-up of retrospective checks on T return copies	A	P C	Administrative arrangement	To do	
6 Establishment of the financial liability of persons other than the principal and the guarantor, especially of carriers	L	D	Articles 96, 203 and 204 of the Customs Code	To do	Examination by Transit Task Force may result in a Commission proposal this year
7 Harmonization of the time limits for notifying the principal and the guarantor, setting an overall limit of three years *	L	D	CCIP Articles 374 and 379	To do	Examination by Transit Task Force may result in a Commission proposal this year
8 Inapplicability in certain situations of the three-month period accorded to the principal to show the regularity of a transit operation or the place where an offence was committed in cases where fraud has been detected *	L	D	CCIP Art. 379	To do	Examination by Transit Task Force may result in a Commission proposal this year
9 Establish the obligation to show the Community status of goods carried by sea	L	P C	CCIP	Under examination	Examined by ad hoc working party on maritime transit on 17 and 18 January 1996 followed by proposal from the Commission

10 Revision of the simplified transit procedures in the light of the restrictions governing sensitive goods *	L	P/C	Article 76(4) of the Code and Articles 397 to 411 of the CCIP	To do	Examination by Transit Task Force may result in a Commission proposal this year
11 Revision of the TIR Convention *	L	D/P/C	TIR Convention	Under way	Before 1998
12 Setting up task forces in the sectors most sensitive to fraud and strengthening cooperation between departments dealing with fraud	O	P/C	Reg. 1468/81	Under way	
13 Improving the early-warning system for sensitive products	O/A	P/C	Administrative arrangement	Under way	2 January 1996
14 Extending the SCENT/CIS network	O	P/C	Reg. 1468/81	Under way	2 January 1996
15 Reinforcing en-route controls by the Member States	L/O	C	National law	Under way	2 January 1996
16 Reinforcing mutual assistance on debt recovery	L	D	Directive 76/308/EEC	To do	To be decided
17 Examining the scope for strengthening financial sanctions against Member States failing in the area of recovery	L	D	Reg. 1552/89	To do	To be decided