



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.07.1996
COM(96) 326 final

Proposal for a
COUNCIL REGULATION (EC)

amending Commission Regulation (EEC) No 2454/93 of 2 July 1993,
containing the Implementing Provisions of Council Regulation (EEC)
No 2913/92, establishing the Community Customs Code

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Subsidiarity.

- a) What are the objectives of the proposed action in relation to Community obligations?

Due to the persistent problem of fraudulent operations taking place within the context of the Community transit regime, it is necessary to propose a re-enforcement of the transit legislation.

- b) Does the proposed action fall within the exclusive competence of the Community or within shared competence with the Member states?

The proposed action falls within the exclusive competence of the Community.

- c) What courses of action are open to the Community?

In the absence of a favourable opinion of the competent Committee in respect of the proposal to modify Commission Regulation (EEC) 2454/93, the Customs Code demands recourse to a Council Regulation.

- d) Is a specific regulation necessary, or will a directive with general objectives suffice, leaving application at Member state level?

A specific regulation is required.

In order to protect the financial interests of Member states and of the Community, the Commission by Decisions dated 28.11.1995¹ and 20.12.1995² gave its agreement to Spain and Germany respectively, for the temporary prohibition of the use of the comprehensive guarantee for external Community transit operations from 1 February 1996 in respect of cigarettes and from 1 April 1996 for a certain number of agricultural products and alcohol.

These two measures apply throughout the Community to all external Community transit movements involving imported non-Community goods.

Within the same framework and in accordance with the commitment entered into by the Commission in its Communication dated 21 February 1996 on its action in respect of the fight against transit fraud³, the Commission Services has proposed that the the level of the comprehensive guarantee covering Community transit operations for sensitive goods, should be set at 100% of the duties and other charges payable on all transit operations performed by the operator in a period of one week.

¹ O.J. L 299 dated 12 December 1995, p.24

² O.J. L 10 dated 13 January 1996, p.44

³ SEC (96) 290 final

This proposal is based on Article 192 of the Customs Code, taking account of the fact that the comprehensive guarantee level set at 30% in accordance with Article 361 paragraph 1 of Commission Regulation (EEC) 2454/93 of 2 July 1993⁴, does not allow recovery of all the duties and other charges payable in the event of cumulative irregular operations.

Taking account of this situation in accordance with Article 249 of Council Regulation (EEC) 2913/92 of 12 October 1992⁵, the Commission representative submitted a draft regulation on this issue to the Customs Code Committee - Transit Section.

The aforementioned draft (Document XXI/91/96) was submitted for the vote of the Committee in the meeting on 16/17 April 1996. As the Committee did not provide an opinion by the necessary qualified majority, (Denmark, Germany, Ireland, Netherlands, Austria, Finland and the United Kingdom voted against the draft, Belgium, and Luxembourg abstained, and the others Member states were in favour), the second phase of the Committee procedure must now be introduced by the Commission as described in Article 249.3.b. of the Community Customs Code.

That is the subject of the annexed proposed regulation.

⁴ O.J. L 253 of 11 October 1993, p. 1.

⁵ O.J. L 302 dated 19 October 1992 p. 1.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992,
establishing the Community Customs Code¹, and in particular Article 249,

Having regard to the proposal from the Commission,

Whereas, on the basis of Article 361, the level of the comprehensive guarantee in external
Community transit fixed at least at 30% does not in all cases ensure the recovery of own
resources in the case of fraud, and that consequently it is advisable to increase the level;

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) 2454/93 is amended in the following manner:

1. In Article 361, paragraph 1 is replaced with the following text:

" 1. The amount of the comprehensive guarantee is fixed at 100% of the duties and
other charges payable, with a minimum of 7000 ECUs, in accordance with the
procedures laid down in paragraph 2 below".

Article 2

This Regulation shall enter into force on the seventh day following its publication in the
Official Journal of the European Communities.

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

Done at Brussels,

For the Council
The President

¹ OJ No L 302, 19.10.1992, p. 1

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