



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.09.1997
COM(97) 472 final

97/ 0242 (COD)

Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)
AMENDING REGULATION (EEC) NO 2913/92
ESTABLISHING THE COMMUNITY CUSTOMS CODE
(TRANSIT)

(presented by the Commission)

EXPLANATORY MEMORANDUM

Recourse to external transit for Community goods

(Article 91(1))

Article 91(1)(b) currently lays down the use of the external transit procedure for Community goods “which are subject to a Community measure involving their export to third countries and in respect of which the corresponding customs formalities for export have been carried out”. Recourse to external transit – a trade facilitation procedure – for the sole purpose of checking that Community goods are actually exported is inappropriate given that, in all but a very few cases, no use is made of the relevant transit guarantee. For agricultural products, the T5 control copy and the guarantees required under the legislation on agriculture provide sufficient checks. That being so, while there is no wish to rule out use of the external transit procedure in connection with the export of Community goods at this stage, its definition should be a matter for the committee procedure.

Discharge of the transit procedure

(Article 92)

The concept of discharge is essential to the proper administration of the transit procedure, to a clear definition of the liabilities of the principal and the guarantor, and to the instigation of any investigation or recovery procedures required. It is already used in the implementing provisions despite the fact that it is not defined in the Code itself. The proposal is intended to rectify this anomaly.

Guarantee waiver

(Articles 94 and 95)

Article 94(2) permits exceptions to the rule that no guarantee need be furnished, notably for journeys by sea, to be determined in accordance with the committee procedure. Transit guarantees for journeys by sea are in the process of being introduced into the Customs Code implementing provisions. However, we should take this opportunity to delete journeys by sea from Article 94(2)(a), so that guarantees are no longer the exception and maritime transport via a shipping line is treated on a par with road transport, etc.

The new approach to comprehensive guarantees adopted in the Customs Code implementing provisions will allow them to be tailored to the trader’s trustworthiness and even reduced to zero, which amounts to granting a guarantee waiver. Article 95 therefore requires redrafting to enable the guarantee waiver to be included in the implementing provisions as one of the options available when determining the comprehensive guarantee, via the committee procedure.

Responsibilities of carriers and consignees

(Article 96)

Under Article 96(2), carriers or consignees who accept goods knowing that they are moving under Community transit have a duty to produce the goods at the customs office of destination with due observance of the measures adopted by the customs authorities for their identification, notwithstanding the principal's own obligations. This clause leads to confusion between the responsibilities imposed on the relevant parties by the transit regulations proper and their existing obligations under the general Code provisions on the introduction of goods into the Community customs territory, without prejudice to any enforcement provisions that may apply. At the same time, in terms of possible financial penalties for non-compliance, it adds nothing to the relevant Code provisions on the incurrance of and liability for customs debt. Hence, it can be deleted.

National and bi/multilateral simplified procedures

(Article 97)

Article 97(2) gives Member States the option of introducing simplified transit procedures for mutual or domestic trade purposes. The Member States' own simplified domestic procedures vary greatly and may in some cases conflict with the need to apply Community transit rules properly and to guarantee traders equal treatment. Existing Community legislation on certain air and sea transport operations offers some scope for bilateral and multilateral simplification schemes. The new Customs Code implementing provisions on transit will in future offer customs authorities and operators a wide range of opportunities for simplifying formalities and considerable freedom in applying them. To improve transparency and ensure that the rules are applied more uniformly, such measures should be made to cover all types of transit arrangement within the customs territory, irrespective of the geographical scope of the operations covered. This renders Article 97(2) superfluous.

Guarantees for duties and other charges in transit

(Article 192)

Article 94(1) of the Code requires the provision of a guarantee for Community transit in order to ensure payment of any customs debt or other charges which may be incurred in respect of the goods. Guarantee systems for Community transit, notably the comprehensive guarantee, are a special case because the arrangements are international and the sum required needs to be tailored to the actual risks inherent in the operation and the principal's trustworthiness; hence the need to insert a proviso with regard to transit guarantees in Article 192.

Place where the customs debt was incurred and authority responsible for entering it in the accounts

(Article 215)

Under the current Article 215 rule it is possible to establish where the customs debt is incurred, but not to link this with the customs authority responsible for its entry in the accounts. Moreover, the rule laid down in Article 215(3) for establishing the place where debts relating to undischarged procedures are incurred is neither suited to suspensive procedures such as transit nor reflects the need to determine, as far as possible, the place where the taxable events actually occurred, where charges other than duties are concerned. Hence the need to redraft those provisions.

**PROPOSAL FOR A
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REGULATION (EEC) NO 2913/92 ESTABLISHING THE COMMUNITY
CUSTOMS CODE
(TRANSIT)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 28, 100a and 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

- (1) Whereas the external transit procedure is primarily designed to facilitate trade in non-Community goods in the customs territory; whereas the need for recourse to that procedure for the export of Community goods appears relatively limited and should be assessed in terms of the wide variety of circumstances covered; whereas, without ruling out all use of the external transit procedure in such cases, its definition should be a matter for the committee procedure;
- (2) Whereas the concept of discharge of the transit procedure should be defined, as it is essential to proper administration of the procedure, to a clear definition of the liabilities of the principal and the guarantor, and to the instigation of any investigation or recovery procedures required;
- (3) Whereas, in the light of amendments to the scope of transit by sea, this opportunity should be taken to delete journeys by sea from Article 94(2)(a), so that guarantees are no longer the exception and maritime transport via a shipping line is treated on a par with, for example, road transport;
- (4) Whereas Article 95 should be redrafted to enable the individual guarantee waiver to be included in the implementing provisions as one of the options available when determining the comprehensive guarantee, via the committee procedure, contingent upon recognition of the highest standards of reliability on the part of the trader;
- (5) Whereas Article 96(2), which lays down that carriers or consignees who accept goods knowing that they are moving under Community transit have a duty to produce the goods at the customs office of destination with due observance of the measures adopted by the customs authorities for their identification, notwithstanding the principal's own obligations, creates confusion between the responsibilities

imposed on the relevant parties by the transit regulations proper and their existing obligations under the general Code provisions on the introduction of goods into the Community customs territory; whereas, moreover, it adds nothing to the relevant Code provisions on the incurrance of and liability for customs debt; whereas, therefore, it may be deleted;

- (6) Whereas the simplified domestic, bilateral or multilateral procedures introduced by the Member States under Article 97(2) vary greatly and may in some cases conflict with the need to apply Community transit rules properly and to guarantee traders equal treatment; whereas they should therefore be reincorporated into the Community framework, especially since the new Customs Code implementing provisions on transit will in future offer customs authorities and operators a wide range of opportunities for simplifying formalities and considerable freedom in applying them; whereas this will render Article 97(2) superfluous;
- (7) Whereas guarantee systems for Community transit cover both customs debt and other charges which may be incurred in respect of the goods, and constitute a special case because the arrangements are international and the sum required needs to be tailored to the actual risks inherent in the operation and the principal's trustworthiness; whereas, therefore, there is a need to insert a proviso with regard to transit guarantees in Article 192;
- (8) Whereas under the current Article 215 rule it is possible to establish where the customs debt is incurred, but not to link this with the customs authority responsible for its recovery; whereas, moreover, where a customs procedure is not discharged, the rule for establishing the place where the customs debt is incurred should be amended to reflect the need to determine, as far as possible, the place where the taxable events actually occurred,
- (9) Whereas simplification and clarification of the rules for the benefit of both operators and customs officials form an essential part of the action plan for Customs transit in Europe,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2913/92 is hereby amended as follows:

1. Article 91(1)(b) is replaced by the following:
"(b) Community goods, in cases and upon conditions determined in accordance with the committee procedure."
2. Article 92 is replaced by the following:

"Article 92

The external transit procedure shall be discharged when the goods entered for the procedure are produced at the customs office of destination with the

corresponding documents, in accordance with the provisions of the procedure in question."

3. Article 94(2), point (a) is replaced by the following:

"(a) journeys by air;"

4. Article 95 is replaced by the following:

"Article 95

The cases in which and the conditions upon which a person may obtain from the customs authorities a guarantee waiver for Community transit operations carried out by him shall be determined in accordance with the committee procedure."

5. Article 96(2) is deleted; Article 96(1) stands alone.

6. Article 97(2) is deleted; Article 97(1) stands alone.

7. Article 192(1) is replaced by the following:

"1. Where customs legislation makes it compulsory for security to be provided, and subject to the specific provisions laid down for transit in accordance with the committee procedure, the customs authorities shall fix the amount of such security at a level equal to:" (the rest is unchanged)

8. Article 215(1) to (3) is replaced by the following new paragraph (1):

"1. For the purpose of determining the authority competent for entry in the accounts, a customs debt shall be incurred:

- at the place where the events from which it arises occur,
- if it is not possible to determine that place, at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred,
- if the goods have been entered for a customs procedure which has not been discharged, and the place cannot be determined pursuant to the first or second indent within a period of time determined, if appropriate, in accordance with the committee procedure, at the place where the goods were either entered for the procedure or were introduced into the Community customs territory under that procedure.

9. Article 215(4) is renumbered paragraph (2).

Article 2

This Regulation shall enter into force on 1 199..

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

Done at Brussels,

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DOCUMENTS

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