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Report

drawn up on behalf of the Committee on External
Economic Relations

on the proposal from the Commission of the European
Communities for a Council Regulation on customs debt
(COM(84) 395 final - Doc. 2-620/84)

Rapporteur: Dame Shelagh ROBERTS

PE 93.346/fin.
Or Fr

By letter of 26 September 1984, the President of the Council of the European Communities consulted the European Parliament pursuant to Article 235 of the Treaty establishing the European Community on the proposal for a Council Regulation on customs debt.

On 9 October 1984, the President of the European Parliament referred this proposal to the Committee on External Economic Relations as the committee responsible and to the Committee on Agriculture, Fisheries and Food, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights for their opinions.

At its meeting of 21 November 1984, the Committee on External Economic Affairs appointed Dame Shelagh ROBERTS rapporteur.

The committee considered the Commission's proposal and the draft report at its meetings of 22 January and 1 February 1985.

At its meeting of 1 February 1985, the committee decided unanimously to recommend that Parliament adopt the proposal to the Council with the amendments set out below.

The committee subsequently adopted the motion for a resolution as a whole unanimously.

The following took part in the vote: Dame Shelagh ROBERTS chairman and rapporteur; Mr HINDLEY, 1st vice-chairman; Mr BLUMENFELD (deputizing for Mr van AERSEN), Mr de CAMARET, Mrs CASTELLINA, Mr HITZIGRATH, Mr KILBY, Mr LEMMER (deputizing for Mr MUHLEN), Mr MOORHOUSE, Mr ROSSETTI (deputizing for Mr GALLUZZI), Mrs van ROOY, Mr SEELER, Mr TZOUNIS, Mr ZAHORKA and Mr ZARGES.

The opinions of the Committee on Agriculture, Fisheries and Food, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights are attached to this report.

The report was tabled on 5 February 1985.

The deadline for the tabling of amendments to this report appears in the draft agenda for the part-session at which it will be debated.

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Opinion of the Committee on Agriculture, Fisheries and Food

Opinion of the Committee on Economic and Monetary Affairs and
Industrial Policy

Opinion of the Committee on Legal Affairs and Citizens' Rights

The Committee on External Economic Relations hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution together with explanatory statement:

I. Proposal for a Council Regulation on customs debt
(COM(84) 395 final - Doc. 2-620/84)

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on External Economic Relations

Preamble and recitals unchanged

Article 1 unchanged

Article 2(1),(a),(b),(c),(d), unchanged

Article 2(1)(e)

Amendment No. 1

(e) the consumption in a free zone of goods liable to import duties or their use in such free zone in any conditions other than those laid down by the regulations in force;

Article 2(1)(e) to read as follows:
The consumption or use in a free zone of goods liable to import duties in any conditions other than those laid down by the regulations in force;

Article 2(1)(f), (g) unchanged

Article 2(2)

Amendment No. 2

The customs debt on importation shall be incurred even if it relates to goods subject to measures of prohibition or restriction on importation of whatever kind.

Article 2(2) to read as follows:
The customs debt on importation shall not be incurred where the goods can be marketed legally only in exceptional cases.

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on External Economic Relations

Article 3 unchanged

Article 4 unchanged

Article 5(1) unchanged

Article 5(2)

Amendment No. 3

The customs debt on exportation shall be incurred even if it relates to goods subject to measures of prohibition or restriction on exportation of whatever kind.

The customs debt on exportation shall not be incurred where the goods can be marketed legally only in exceptional cases.

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation on customs debt

The European Parliament,

- having regard to the proposal from the Commission to the Council¹,
 - having been consulted by the Council pursuant to Articles 43 and 235 of the EEC Treaty (Doc. 2-620/84),
 - having regard to the report by the Committee on External Economic Relations and the opinions of the Committee on Agriculture, Fisheries and Food, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights (Doc. 2-1590/84),
 - having regard to its result of the note on the Commission's proposal,
- A. whereas it is necessary to supplement Community legal provisions currently in force,
 - B. whereas this matter was partly resolved by Council Directive 79/623/EEC of 25 June 1979,
 - C. whereas this proposal is very largely based on the text of Council Directive 79/623/EEC of 25 June 1979 with certain drafting amendments and additions needed in a directly applicable instrument,
1. Calls on the Commission to incorporate into its proposal, pursuant to Article 149, second paragraph, of the EEC Treaty, the amendments adopted by Parliament;;
 2. Instructs its President to forward to the Council and the Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

¹ OJ No. C 261, 29.9.84, p.4.

EXPLANATORY STATEMENT

- I. Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt specifies those cases in which an obligation arises to pay the import duties or export duties to which goods are liable. It also specifies the moment when that obligation arises and the circumstances in which it is extinguished.
- II. This proposal for a regulation is very largely based on the text of Directive 79/623/EEC, but with certain drafting amendments and additions needed in a directly applicable instrument.

In view of developments that have taken place since Directive 79/623/EEC was adopted, it has been considered necessary to add to its provisions in several respects:

1. Firstly, a new case in which customs debt is incurred was established when the Council adopted Regulation (EEC) No. 3599/82 of 21 December 1982 on temporary importation arrangements.
2. Secondly, experience has shown that the wording of Directive 79/623/EEC could give rise to some uncertainty as to the incurrance of a customs debt in the event of the unlawful importation or exportation of goods which are subject to measures of prohibition or restriction on importation or exportation.

The purpose of both import duties and export duties is to protect the Community economy. It is by reference to that purpose that the question must be settled.

In view of the specifically legal and highly technical nature of this matter, the Committee on External Economic Relations considers that the Committee on Legal Affairs and Citizens' Rights is in a better position to consider the various aspects of the proposal and endorses the conclusions set out in that committee's opinion attached to this report.

OPINION OF THE COMMITTEE ON AGRICULTURE, FISHERIES AND FOOD

Letter from the Chairman of the Committee to Dame Shelagh ROBERTS, Chairman of the Committee on External Economic Relations

Cork, 30 November 1984

Subject: Proposal for a Council Regulation on customs debt

Dear Chairman:

The Committee on Agriculture, Fisheries and Food¹ considered the above proposal from the Commission at its meeting of 28-30 November 1984.

The purpose of the proposal is to embody the provisions of the Directive 79/623/EEC in a Regulation so that all Community provisions concerning the obligation to pay the import or export duties to which goods are liable are contained in legal instruments of the same type in all Member States. A Regulation is the best instrument to ensure that Community rules are applied in a uniform manner, and the Commission's Explanatory Memorandum makes clear why the above-mentioned Council Directive which has been in force should be converted into a Regulation.

The proposed measures is therefore very much of a technical nature, with certain drafting amendments and additions, in view of the developments which have taken place since Directive 79/623/EEC was adopted. These new additions do not affect agriculture.

The Committee on Agriculture, Fisheries and Food approves the proposal.

Yours sincerely,

Teun TOLMAN

1. The following took part in the vote: Mr Tolman (chairman), Mr Eyraud (vice-chairman), Mr Boutos (deputizing for Mr Stavour), Mr Christensen, Mr Dalsass, Mr Debatisse, Mr Ebel (deputizing for Mr Früh, Mr Guarraci, Mr Guermeur (deputizing for Mr Fanton), Mr Jepsen, Mr Klinkenborg (deputizing for Mr Wettig), Mr Ligios (deputizing for Mr F. Pisoni), Mr Marck, Mr O'Donnel (deputizing for Mr Clinton), Mr Raftery (deputizing for Mr Mertens), Mr Romeos, Mrs Rothe, Mr Sakellariou (deputizing for Mr Woltjer), Mr Spath (deputizing for Mr N. Pisoni), Mr Sutra, Mr Taylor (deputizing for Mr Simmonds).

OPINION

(Rule 101 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr ROMUALDI

On 16 October 1984, the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Romualdi draftsman.

At its meeting of 18/19 December 1984, the committee considered the draft opinion and, in the absence of Mr Romualdi, instructed Mr Rogalla to present it.

At the same meeting, the committee adopted the draft opinion by 20 votes to 1 with no abstentions.

The following took part in the vote: Mr Seal, chairman; Mr von Bismarck and Mr Beazley, vice-chairmen; Mr Beumer, Mr Bonaccini, Mr Cassidy, Mr Christodoulou (deputizing for Mr Ercini), Mr Cryer (deputizing for Mrs Gredal), Mr De Vries, Mr Friedrich, Mr Gautier, Mr Metten, Mr Mühlen (deputizing for Mr Franz), Mrs Oppenheim, Mr Patterson, Mr Quin, Mr Raftery, Mr Rogalla, Mr Starita, Mrs Van Hemeldonck and Mr von Wogau.

1. Council Directive 79/623/EEC of 25 June 1979¹ specified all the cases in which a customs debt is incurred at Community level.

Parliament approved this directive² which was considered of great importance for the smooth functioning of the customs union.

In the text under consideration, the Commission is proposing to embody the provisions of this directive in a regulation, so as to ensure that Community rules are applied in a uniform manner in each of the Member States. In addition, following the submission of two proposals for regulations aimed at determining, respectively, the persons liable for payment of a customs debt³ and the security to be given to ensure payment of a customs debt,⁴ the Community provisions concerning the obligation to pay the import or export duties to which goods are liable would thus be contained in legal instruments of the same type.

The Committee on Economic and Monetary Affairs and Industrial Policy approves this measure which is designed to secure equal treatment for all economic operators in the EEC and to strengthen the economic function of import and export duties.

2. In the Commission's own words, the proposal for a regulation 'is very largely based on the text of Directive 79/623/EEC, but with certain drafting amendments and additions needed in a directly applicable instrument' and it takes account of 'developments that have taken place since Directive 79/723/EEC was adopted' and of the need 'to add to its provisions in several respects'.

The present opinion will concentrate on these modifications.

Consideration of the proposal

3. A new case in which a customs debt is incurred was established when the Council adopted Regulation (EEC) No. 3599/82 of 21 December 1982 on temporary importation arrangements⁵ - namely the application of temporary importation arrangements with partial relief from import duties. Our committee agrees with the need to lay down rules for this new case identical to those governing putting into free circulation.

1 OJ No. L 179, 17.7.79

2 OJ No. C 238, 11.10.76, p.42

3 Doc. 1-11-66/82; favourable opinion by Parliament in OJ No. C 127, 14.5.84, p.247

4 Doc. 1213/82; favourable opinion by Parliament in OJ No. C 77, 19.3.84, P.162

5 See OJ No. L 376, 31.12.82, p.1; opinion by Parliament in OJ No. C 296, 11.12.78, p.52

4. For the same reasons the committee also welcomes the inclusion, with regard to goods obtained under the inward processing procedure, of the customs debts arising from the implementation of an agreement with the EFTA countries or in the case of a Member State of the Community.
5. The Committee on Economic and Monetary Affairs and Industrial Policy also agrees with the Commission that, since the aim of import and export duties is to protect the Community economy, no distinction should be made, in respect of the application of the rates of duty laid down, between goods which enter the Community economy lawfully and those which do so unlawfully. The provisions introduced by the Commission in Articles 2(2), 5(2) and 8(1)(b) are therefore appropriate.
6. With regard to free zones, however, the present wording of Article 2(1)(b) does not contribute to a clear understanding of the provision it seeks to introduce. It would be preferable to retain the text of Article 2(b) of Directive 79/263/EEC with the addition of a reference to the amendment of Directive 68/312/EEC following the Act of Accession of Greece.
7. The Committee on Economic and Monetary Affairs and Industrial Policy notes the Commission's intention not to include in this proposal for a regulation the provisions of Article 8 of Directive 79/623/EEC (which establish the moment from which a customs debt falls due), as these were to be dealt with in a specific proposal for a regulation on the entry in the accounts and the terms of payment of customs debts, which will be submitted by the Commission at a later date. However, the committee considers that this proposal, which is a vital addition to the provisions on customs debt, ought to have been submitted at the same time as the proposal under consideration, to enable them to be adopted jointly by the Council of Ministers.

The committee should therefore be asked to draw up its proposals on the entry in the accounts and the terms of payment of customs debts as soon as possible, since the regulation governing customs debt is due to enter into force on 1 July 1985.

8. Closely linked with the provisions of the regulation under consideration are the proposals aimed at determining the persons liable for payment of a customs debt and the security to be given to ensure its payment. Here again it would be preferable for the Council to take a joint decision to prevent discrepancies which could be harmful to the proper application of Community rules. It should also be pointed out that the third indent of Article 1(2)(b) of the proposal for a regulation on customs debt defines as a 'person' an association of persons recognized as having legal capacity but lacking the legal status of legal person. This definition has been included to take account of the situation in one Member State. The Committee on Economic and Monetary Affairs and Industrial Policy approves this definition but feels that a similar addition should be included in the proposal for a regulation determining the persons liable for payment of a customs debt, so as to prevent problems of interpretation. The Commission should therefore be asked to amend the text accordingly before the Council comes to adopt it.

9. One final observation concerns the Italian text of the second part of Article 10 of the proposal.

The content of the provision laid down has remained unchanged by comparison with Article 10 of Directive 79/623/EEC but the wording is more cumbersome and less clear. The original Italian text of the directive should therefore be used.

CONCLUSIONS

10. The Committee on Economic and Monetary Affairs and Industrial Policy:

- (a) welcomes the Commission's proposal to embody in a regulation the provisions of Council Directive 79/623/EEC of 25 June 1979;¹
- (b) recalls that Parliament has approved the aforementioned directive² and that its opinion therefore focuses on the additions and amendments introduced by the Commission in the text of the regulation;³
- (c) approves the inclusion of new cases in which a customs debt is incurred following the Council's adoption of Regulation (EEC) No. 3599/82 of 21 December 1982 on temporary importation arrangements⁴ and in order to take account of the implementation of an agreement with the EFTA countries or in the case of a Member State of the Community;
- (d) believes that, for the purpose of applying the rates of duty laid down, no distinction should be made between goods which enter the Community economy lawfully and those which do so unlawfully, although this should not preclude a specific regulation on drugs, taking account also of the judgements delivered by the Court of Justice on the subject;
- (e) considers it necessary, in order to prevent discrepancies which could be harmful to the proper application of Community rules on the obligation to pay the import and export duties to which goods are subject, for the Commission to draw up as soon as possible proposals on the entry in the accounts and the terms of payment of customs debts and for the Council to consider jointly all the various proposals for regulations on this subject;⁵

¹ OJ No. L 179, 17.7.79

² OJ No. C 238, 11.10.76, p.42

³ Doc. 2-620/84

⁴ OJ No. L 376, 31.12.82, p.1

⁵ Horvarth, Case 50/80; Wolf, Case 221/81, Einberger, Case 240/81

(f) considers that in order to prevent problems of interpretation, the Commission should, on the basis of the third indent of Article 1(2)(b) of the proposal for a regulation under consideration,⁶ amend Article 1 of its proposal for a regulation on determining the persons liable for payment of a customs debt,⁷ by adding a reference to associations of persons recognized as having legal capacity but lacking the legal status of legal person;

(g) recommends the Committee on External Economic Relations, which is the committee responsible, to submit the following amendments to the proposal for a regulation on customs debt:⁶

I. Article 2(1)(b):

- Replace with the text of Article 2(b) of Directive 79/623/EEC, with the addition of a reference to the amendment of Directive 68/312/EEC following the Act of Accession of Greece;

II. Article 10 of the Italian text:

- Replace the text 'per quanto di ragione ... obbligazione medesima' with the text of Article 10 of Directive 79/623/EEC which reads 'mutatis mutandis ... di tale obbligazione'.

⁶ Doc. 2-620/84

⁷ Doc. 1-1166/82

OPINION

of the Committee on Legal Affairs and Citizens' Rights

Draftsman: Mr Rogalla

On 31 October 1984 the Committee on Legal Affairs and Citizens' Rights appointed Mr Rogalla draftsman of the opinion.

The draft opinion was considered at the committee's meetings of 23 January and 1 February 1985 and adopted at the latter meeting by 9 votes to 5 with 1 abstention.

The following were present: Mrs Vayssade, chairman; Mr Evrigenis and Mr Gazis, vice-chairmen; Mr Rogalla, draftsman (deputizing for Mr Rothley); Mr Barzanti, Mrs Boot (deputizing for Mrs Fontaine), Mr Casini, Mr Hoon, Mr Malangré, Mr Schwalba-Hoth, Mr Stauffenberg, Mr Ulburghs, Mr Vetter, Mr Wijensbeek (deputizing for Mr Donnez) and Mr Zagari.

I. INTRODUCTION

1. On 8 April 1976 the Commission submitted to the Council a proposal for a Council directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (COM(76) 127 final, Doc. 104/76).

On 17 September 1976 the European Parliament delivered a largely positive opinion on this on the basis of the report drawn up by Mr Schmidt (Doc. 237/76) (OJ No. C 238 of 11 October 1976, p. 42).

On 25 June 1979 the Council adopted Directive 79/623/EEC with only minor amendments (OJ No. L 197 of 17 July 1979, p. 31).

2. The Commission proposal now under consideration (COM(84) 395 final - Doc. 2-620/84) is the transposition of that directive into a regulation on customs debt.

II. The regulation as the appropriate legal form

3. In the explanatory memorandum of its proposal the Commission correctly points out that the legal form of a regulation would have been appropriate from the outset but that this was impossible owing to the lack of certain information. It may be seen from the fullness and precision of the provisions contained in Directive 79/623/EEC that it actually has the characteristics of a regulation.

4. In its document the Commission gives no particulars of the success or failure of the transposition of the directive into national law. Nevertheless, the First Annual Report on the monitoring of the application of Community law 1983 (COM(84)181 final) does not enumerate this directive as one of the problem cases. It must therefore be assumed that the directive has been correctly transposed.

5. In the meantime the Commission has submitted a proposal for a regulation determining the persons liable for payment of a customs debt (OJ No. C 340 of 28 December 1982, p. 5), obviously having managed to obtain the information which it still lacked in 1976. The real argument for transposing Directive 79/623/EEC into a regulation is the need to embody the payment of import and export duties on goods in legal instruments of the same type.

III. Changes as compared with the directive

6. Apart from several drafting amendments, the proposal for a regulation also contains a few additions, in particular the proposed rules in the event of the unlawful importation or exportation of goods which are subject to measures of prohibition or restriction on importation or exportation.

7. The Commission takes the view that the wording of Directive 79/623/EEC as it stands gives rise to uncertainty as to the incurrance of a customs debt.

8. The Commission believes that the decisive factor should be whether a trader in fact succeeds in bringing into the Community economy goods from third countries. If this is the case a customs debt must also be incurred. It is only otherwise if the goods are confiscated by the competent authorities and have not been used before such confiscation.

9. The definition of goods subject to measures of prohibition or restriction on importation or exportation includes inter alia drugs, a word which does not occur in the Commission document.

If drugs are intended for medical or scientific purposes they may be imported and exported, by way of derogation, it being clearly provided that a customs debt is incurred as a result.

10. The Court of Justice of the European Communities has, in an established line of cases, very clearly settled the way in which cases where drugs are imported or exported apart from this should be treated¹.

There can no longer be any doubt as to whether a customs debt is incurred in such cases: no customs debt is incurred in respect of drugs which are distributed through illegal channels and remain within such channels, regardless of whether they are discovered and destroyed or are not detected by the authorities.

11. The Court of Justice of the European Communities gives convincing reasons for this:

The economic concept underlying the EEC Treaty is based on the introduction of the Common Customs Tariff, which was provided for in subparagraph (b) of Article 3 of the EEC Treaty and falls within the scope of the objectives assigned to the Community in Article 2 and the guidelines laid down in Article 29 for the operation of the customs union. Imports or exports of drugs in the Community, which can give rise only to repressive measures, fall wholly outside those objectives and guidelines².

In other words, the economic channels of the Community are solely the legal ones. Goods in illegal circulation give rise only to a criminal prosecution.

¹Case 50/80, Horvath / 1981 / ECR 385; Case 221/81, Wolf v Hauptzollamt Dusseldorf / 1982 / ECR 3681; Case 240/81, Einberger v Hauptzollamt Freiburg / 1982 / ECR 3699; most recently upheld in Case 294/82, Einberger, judgment of 28 February 1984, not yet published.

²Case 221/81, Wolf I1982I ECR 3681 at 3690

12. The reference to criminal proceedings, over which the Member States still have jurisdiction, is also pertinent from another point of view.

Criminal proceedings against a drug dealer provide the safeguards and flexible criteria for appraisal which are characteristic of such proceedings. Thus the dealer's own independence, his social situation as a whole and whether he is deemed to be responsible for his actions may be taken into account. The judgment therefore varies according to the individual case. If an unconditional customs debt were incurred in addition this would also be a kind of penalty on the person concerned and one which would also in many instances make it completely impossible to rehabilitate him.

13. The Commission gives no reasons for wanting to change this clear and sensible situation.

The customs debts which it seeks to introduce would be own resources of the Community (see reference on page 7 of the Commission document). It cannot be assumed that this might have something to do with the Commission's proposal. The latter should however avoid providing the slightest excuse for such comments to be made.

14. Article 2 (2), Article 5(2), Article 5(2) and the recitals, which have been incorporated in the Commission proposal, should therefore be amended.

15. Further additions to Directive 79/623/EEC concern the following:

- temporary importation with partial relief from import duties;
- cases in which a customs debt on importation can be incurred in respect of goods placed in a free zone;
- goods imported from third countries for the manufacture of compensating products and subsequently exported to the EFTA countries;
- cases similar to the previous one in which compensatory levies may be incurred in relation to Member States acceding to the Community.

IV. Conclusions

16. The Committee on Legal Affairs and Citizens' Rights:

- (a) approves the aim of transposing Directive 79/623/EEC into a regulation, especially because there is a close connection between the provisions thereof and the proposal for a regulation determining the persons liable for payment of a customs debt (OJ No. C 340 of 28 December 1982, p. 5)¹.
- (b) approves the other new provisions;

¹ Doc. 1-1166/82: opinion of the European Parliament of 13 April 1984 based on a report drawn up by Mr d'Angelosante on behalf of the Legal Affairs Committee, Doc. 1-87/84, in OJ No. C 127 of 14.5.1984, p. 247. The problem as to whether the Committee on Legal Affairs and Citizens' Rights was responsible could have been settled by direct analogy with this related problem.

(c) with the exception of those whereby a customs debt is incurred where the goods may only be marketed legally in exceptional cases;

(d) recommends to the Committee on External Economic Relations, which is the committee responsible, that it should propose the following amendments to the proposal for a Council regulation on customs debt (COM(84) 395, Doc. 2-620/84):

I. Article 2(2) to read as follows:

'The customs debt on importation shall not be incurred in respect of goods which can be marketed legally only in exceptional cases.'

II. Article 5(2) to read as follows:

'The customs debt on exportation shall not be incurred in respect of goods which can be marketed legally only in exceptional cases.'

III. The recitals in the preamble to the proposal for a regulation should be adjusted accordingly.