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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 724 final

Brussels, 11 January 1979

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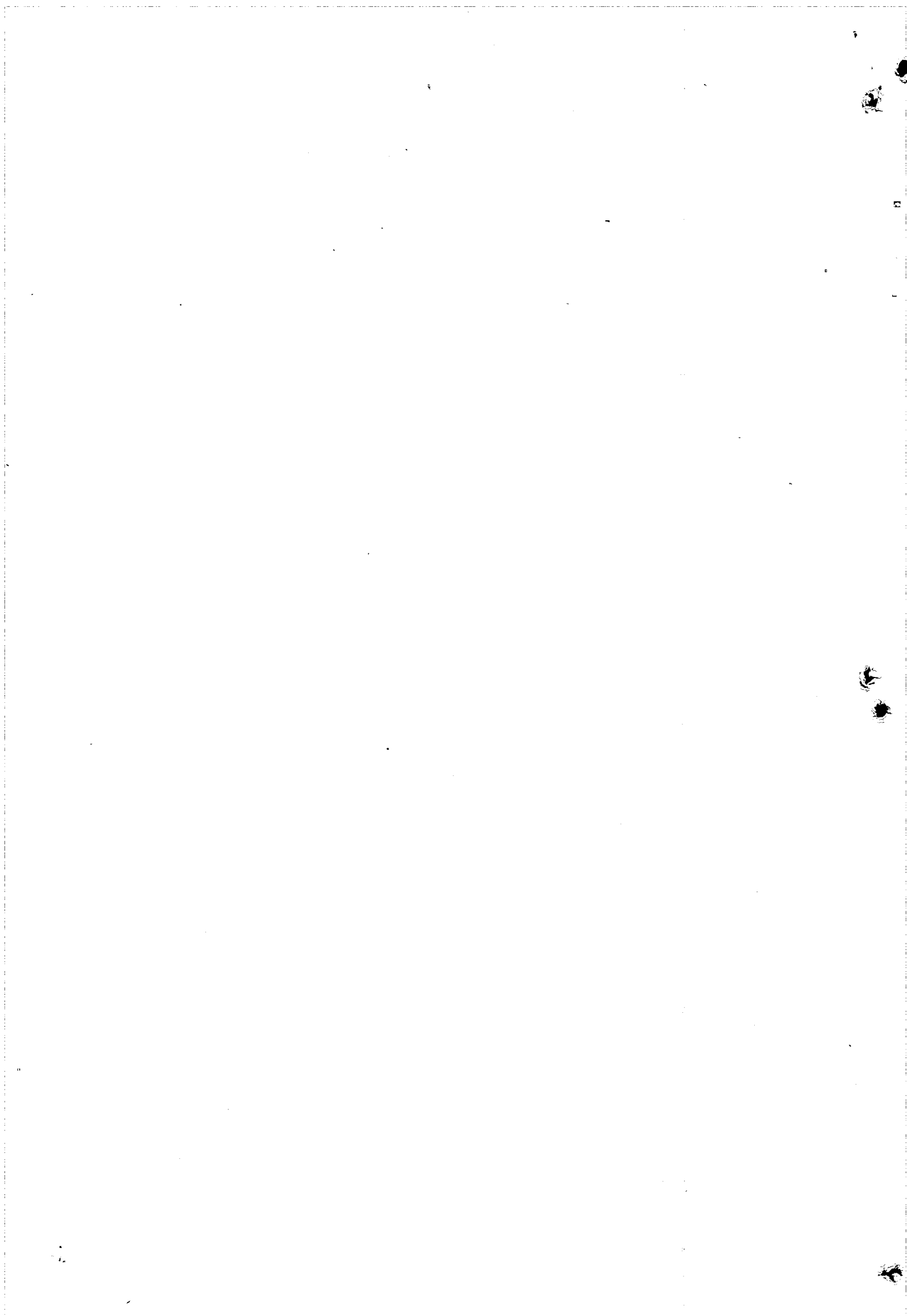
SERIALS UNIT

Proposal for a
COUNCIL REGULATION

defining the conditions under which a person may be
permitted to make a customs declaration

(submitted to the Council by the Commission)

COM(78) 724 final



EXPLANATORY MEMORANDUM

For goods to be placed under a customs procedure, a customs declaration must be lodged with the competent authorities. Such a declaration gives rise to various legal consequences for the person making it, which vary according to the customs procedure under which the goods are to be placed and also according to the conditions of his intervention. The person making the customs declaration is normally known as the "declarant".

Given the role played by the declarant in the discharge of the legal obligations arising from acceptance by the customs authorities of the customs declaration, one might assume that the conditions under which a person is permitted to make such a declaration would be more or less the same in all the Community Member States.

The rules currently in force, however, differ appreciably from one Member State to another, particularly as regards the possibility of making a customs declaration, whether in one's own name on behalf of another person or whether in the name and on behalf of another person. In some Member States this practice is widely permissible, and there is normally nothing to prevent the application of the law relating to agency. In other Member States, however, the right to make a customs declaration on behalf of another person is specifically restricted to natural or legal persons approved by the customs authorities. Furthermore, the scope of the restrictions is not the same in each of the Member States operating such restrictions.

These discrepancies affecting the right to make a customs declaration on behalf of another person have consequences not only as regards the extent of the intervention of the customs authorities responsible for checking customs declarations but also as regards the financial burden on Community firms which results from declaring their goods for a given customs procedure. To the extent that some firms are obliged to use approved declarants more

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or less systematically, unlike others which may be represented by employees or other agents of their choice, the former incur higher extra-administrative costs than the latter for one and the same customs operation.

These costs obviously affect the price of an imported or exported product, and hence distort the conditions of competition between Community firms.

Such distortions of treatment between Community firms are incompatible with the proper operation of the customs union. Common rules must be established to remove them.

This proposal for a regulation is designed to establish such rules, and is based on the following principles :

(a) Since the import or export duties to which goods are liable are based solely on the goods themselves, any person able to present to the customs authorities responsible for collecting the duties the goods in question and the documents required by the provisions governing the customs procedure under which the goods are to be placed should be entitled to make the customs declaration.

In accordance with the rules of civil or commercial law governing the relationship between natural or legal persons and between them and the goods in their possession that person may act, as the case may be, either in his own name and on his own behalf or in his own name but on behalf of another person, or in the name and on behalf of another person.

(b) In order to be able to carry out their controls as effectively as possible, the customs authorities must know in what capacity a person making a declaration is acting.

The reason is that a declarant's personal liability vis-à-vis the customs authorities varies according to his legal capacity.

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For the customs authorities to determine what action to take in respect of customs clearance and, where appropriate, ex post facto verifications, it is necessary, where the declarant is acting, either in his own name but on behalf of another person, or in the name and on behalf of another person that they be informed of the precise legal relationship in which the declarant stands to the owner (or presumed owner); this makes it possible to apportion responsibility in the event of any breach of the provisions with which the said authorities are required to ensure compliance.

- (c) Given the nature of the customs union (in particular, the existence of a common customs territory) and the basic objectives of the Treaty with regard to the free movement of goods, persons and services, any person domiciled in the Community should be permitted to make a customs declaration, irrespective of the Member State in which the customs formalities are completed. The rule currently in force in the majority of the Member States, which provides that, with certain exceptions (e.g. travellers), only persons domiciled in the Member State where the declaration is lodged may be declarants, cannot be maintained. The provisions on mutual assistance between the competent authorities of the Member States, particularly in the field of debt recovery, already make it possible to reach a debtor anywhere in the Community, irrespective of the Member State in which the customs debt was incurred. When the measures proposed by the Commission on criminal-law protection of the financial interests of the Communities and the prosecution of infringements of the provisions of the Treaties^{*)} are adopted, it will also be possible to obtain from any Member State the legal assistance required to ensure the removal of infringements of Community law.

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*) OJ. No C 222, 22.9.1976, p. 2

There is therefore no longer any ground for providing that a declarant must be domiciled in the Member State where the customs formalities are carried out. While any person domiciled in the Community should be permitted to make a customs declaration, it does not, however, appear feasible to extend this right to persons domiciled elsewhere, unless the declaration is made by the declarant in his own name and on his own behalf on an occasional basis (e.g. travellers) (see Article 4).

(d) It must be possible to exclude persons who have committed serious or repeated offences against customs or fiscal legislation or the legislation concerning financial operations with foreign countries from the right to declare on behalf of a third person.

The customs authorities cannot carry out detailed checks on all customs declarations presented to them, and it is therefore important that their dealings with declarants should take place in an atmosphere of trust.

Measures excluding persons from the right to declare on behalf of a third person on grounds such as these exist in most Member States. These avenues should be kept open, and arrangements made to ensure that the exclusion measures are applied throughout the Community (see Articles 5 and 6).

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This proposal is based on Article 235 of the Treaty establishing the European Economic Community, and the Opinion of the European Parliament is required. In view of the proposal's object, it also appears advisable to seek the Opinion of the Economic and Social Committee.

Proposal for a Council Regulation
defining the conditions under which a person
may be permitted to make a customs declaration

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

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

Whereas the placing of goods imported into or exported from the Community
under a customs procedure is subject to the lodging of a customs declaration
with the competent customs authorities;

Whereas the conditions under which a natural or legal person is entitled to
make a customs declaration vary appreciably from one Member State to another,
in particular as regards the possibility of making a customs declaration
on behalf of another person; whereas the declaration of goods for a given
customs procedure may thus, for reasons connected solely with the manner
in which the said conditions are defined, entail extra-administrative
expenses which differ depending on the Member State with whose customs
authorities the declaration is lodged;

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Whereas the said conditions must be harmonized in order to eliminate any distortion in the treatment of Community firms in this field;

Whereas the provisions to be adopted at Community level must take into account both the nature of the customs union, and in particular the existence of the common customs territory, and the basic objective of the Treaty with regard to the free movement of goods, persons and services within the Community;

Whereas the said Community provisions must also take into account the special conditions of international trade, and the consequent need for the customs authorities to have a set of rules enabling them to carry out their controls as effectively as possible and guard against any irregularities;

Whereas the Treaty does not provide the necessary powers for the introduction of rules defining the conditions under which a natural or legal person may be permitted to make a customs declaration; whereas this Regulation should therefore be based on Article 235 of the said Treaty,

HAS ADOPTED THIS REGULATION :

Article 1

For purposes of this Regulation :

- (a) person means any natural or legal person;
- (b) customs declaration means the document by which a person indicates his wish to place goods under a given customs procedure.

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Article 2

The customs declaration of goods may be made by any person able to produce to the competent customs service the goods in question as well as all documents production of which is provided for by the provisions governing the customs procedure requested for the goods.

The person who makes a customs declaration shall be referred to hereafter as the "declarant".

Article 3

1. The declarant may establish the customs declaration :

- (a) in his own name and on his own behalf; or,
- (b) in his own name but on behalf of another person; or,
- (c) in the name and on behalf of another person.

2. When the customs procedure to which the customs declaration relates involves the personal commitment of the person concerned to fulfil a particular obligation, or when acceptance of the customs declaration requires the production of an authorisation or any other document established on a nominative basis, only the person bound to carry out the obligation in question or in whose name the authorisation or necessary document has been established may establish the declaration in his own name and on his own behalf.

3. Where the declarant acts in accordance with paragraph 1(b) or (c) this should be stated on the customs declaration. Where they consider it necessary the customs authorities may require the declarant to provide evidence of the accuracy of any such statement and to give particulars of the precise legal capacity in which he is acting.

Article 4

Save where rules adopted under a specific customs procedure provide otherwise, the declarant must be domiciled in the Community.

This requirement shall not, however, apply to persons declaring goods on an occasional basis in their own name and on their own behalf.

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Article 5

Persons who have committed serious or repeated offences against customs, fiscal or economic legislation may be excluded from the right to declare on behalf of another person.

Article 6

1. The General Customs Regulation Committee provided for in Article 25 of the Council Directive of on the harmonization of procedures for the release of goods for free circulation may examine any question relating to the application of this Regulation submitted to it by its chairman either on his own initiative or at the request of the representative of a Member State.
2. The provisions necessary for the application of Articles 3 to 5 shall be adopted in accordance with the procedure laid down in Article 27 (2) and (3) of the said Directive.

Article 7

This Regulation shall enter into force on 1 January 1980.

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

Done at Brussels,

For the Council,

The President