

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89)214 final -SYN 195

Brussels, 11 May 1989

Proposal for a

COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 1031/88 determining the persons  
liable for payment of a customs debt

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(presented by the Commission)

*Concise*

EXPLANATORY MEMORANDUM

Article 10 of Council Regulation (EEC) No 2504/88 of 25 July 1988 on free zones and free warehouses<sup>1</sup> lays down that non-Community goods may be consumed or used in free zones or free warehouses only in the circumstances indicated therein, i.e. in practice in the same circumstances as in other parts of the customs territory of the Community.

Provision therefore had to be made for a further case in which a customs debt on importation is incurred resulting from the consumption or use in a free zone or free warehouse, in circumstances other than those covered by the rules in force, of goods liable to import duties. Such was the purpose of Council Regulation (EEC) No 4108/88 of 21 December 1988 amending Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt.<sup>2</sup>

It is now a question of determining which persons are liable for payment of a customs debt incurred in such circumstances, and Council Regulation (EEC) No 1031/88 of 18 April 1988 determining the persons liable for payment of a customs debt<sup>3</sup> should be supplemented accordingly.

To that end, it would seem appropriate to refer to the principles adopted to determine the persons liable for payment of a customs debt where goods liable to import duties are removed from the customs supervision involved in the temporary storage of the goods or their being placed under a customs procedure involving customs supervision (see Article 4 of Regulation (EEC) No 1031/88).

<sup>1</sup> OJ No L 225, 15.08.1988, p. 8.

<sup>2</sup> OJ No L 361, 29.12.1988, p. 2

<sup>3</sup> OJ No L 102, 21.4.1988, p. 5.

This is because, since goods can be consumed or used in free zones or free warehouses only under the same conditions as in other parts of the customs territory of the Community, the unlawful consumption or use of non-Community goods in such zones or warehouses must be treated in the same way as if the said goods were unlawfully consumed or used in another part of the customs territory of the Community. Moreover, in both cases the said unlawful acts have the same adverse economic consequences.

This is why it is proposed in such cases to hold liable for payment of the customs debt those persons having unlawfully consumed or used goods and any other persons who are liable, under the provisions in force in the Member States, by reason of such unlawful consumption or use.

It will therefore be possible to recover the customs debt from a maximum number of people and, in order to ensure optimum recovery of the amounts of duty payable, which constitute own resources of the Community budget, provision is also made for applying the principle of joint and several liability of all persons thus liable to pay the customs debt.

Further, where goods have disappeared from a free zone or free warehouse and such disappearance is considered equivalent to unlawful consumption or use in the free zone or the free warehouse since it cannot otherwise be satisfactorily accounted for, it cannot be ruled out that the goods have been consumed or used in another part of the customs territory of the Community.

Since, in such a case, the person having consumed or used the goods that have disappeared is unknown, it is proposed that the person who according to the knowledge of the authorities was last in possession of the goods in question, shall be liable for the payment of the customs debt.

For the same reasons as indicated above any other persons who are liable under the provisions in force in the Member States by reason of the fact that the goods are considered to have been used or consumed unlawfully in the free zone or the free warehouse shall also be jointly or severally liable for the payment of the customs debt.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,  
and in particular Article 100a thereof,

Having regard to the proposal from the Commission,<sup>1</sup>

In cooperation with the European Parliament,<sup>2</sup>

Having regard to the opinion of the Economic and Social Committee,<sup>3</sup>

Whereas Council Regulation (EEC) No 4108/88 of 21 December 1988 amending  
Regulation (EEC) No 2144/87 on customs debt<sup>4</sup> provided for  
a further case in which a customs debt on import is incurred resulting  
from the consumption or use in a free zone or a free warehouse, in  
circumstances other than those covered by the rules in force, of goods  
liable to import duties;

Whereas, in order to take account of this further case in which a customs  
debt on import is incurred, Council Regulation (EEC) No 1031/88<sup>5</sup>  
should be supplemented accordingly; whereas provision should be made that  
in such a case not only the persons who consumed or used the  
goods in question in circumstances other than those covered by the rules  
in force, but also any other persons who are liable, under the provisions  
in force in the Member States, by reason of such consumption or use, are  
jointly and severally liable for payment of the customs debt;

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1 OJ No C ...., p. ..  
2 OJ No C ...., p. ..  
3 OJ No L ...., p. ..  
4 OJ No L 361, 29.12.1988, p.2..  
5 OJ No L 102, 21.4.1988, p. 5.

Whereas, in cases where goods have disappeared and the customs authority considers that such goods have been consumed or used in the free zone or the free warehouse and in so far as none of the persons referred to in the preceding recital is known the person liable for payment of the customs debt shall be the person who, according to the knowledge of the authorities, was last in possession of the goods in question; in this case it is also important to provide that any other persons who are liable under the provisions in force in the Member States by reason of the fact that the goods are considered to have been used or consumed in the free zone or the free warehouse shall be also jointly and severally liable for payment of the customs debt,

HAS ADOPTED THIS REGULATION:

Article 1

The following Article 6a is hereby added to Title I of Regulation (EEC) No 1031/88:

"Article 6a

1. Where a customs debt has been incurred pursuant to Article 2(1)(g) of Regulation (EEC) No 2144/87, the person having consumed or used the goods in a free zone or free warehouse in circumstances other than those covered by the rules in force shall be liable for payment of such debt.

Any other persons who are liable, under the provisions in force in the Member States, by reason of such consumption or use shall also be jointly and severally liable for payment of such debt.

2. Where goods have disappeared and the customs authority considers that they have been consumed or used in the free zone or free warehouse, and where it is not possible to apply paragraph 1, the person who, according to the knowledge of the authorities, was last in possession of the goods, shall be the person liable for payment of the customs debt.

Any other persons who are liable, under the provisions in force in the Member States by reason of the fact that the goods are considered to have been used or consumed in the free zone or the free warehouse, shall also be jointly and severally liable for payment of such debt."

Article 2

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

It shall be applicable from the date of implementation of Council Regulation (EEC) No 2504/88 of 25 July 1988 on free zones and free warehouses<sup>6</sup>.

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

Done at Brussels,

For the Council,

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<sup>6</sup>OJ No L 225, 15.8.1988, p.8.

Commission of the European Communities

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