



European Communities

EUROPEAN PARLIAMENT

SESSION DOCUMENTS

English Edition

31 January 1991

A3-0011/91/PART A

** I

REPORT

of the Committee on Legal Affairs and Citizens' Rights

on the proposal from the Commission to the Council
for a regulation establishing a Community Customs Code
(COM(90) 0071 - C3-0103/90 - SYN 253)

Rapporteur: Lord INGLEWOOD

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Part A: Amendments
Draft legislative resolution

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

* = Consultation procedure requiring a single reading

**I = Cooperation procedure (first reading)

**II = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

*** = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

PE 143.358/fin./A
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C O N T E N T S

| | <u>Page</u> |
|--|-------------|
| Procedural page | 3 |
| A. Amendments to the Commission proposal | 4 |
| DRAFT LEGISLATIVE RESOLUTION | 15 |

By letter of 4 April 1990, the Council consulted the European Parliament, pursuant to Articles 28, 100A and 113 of the EEC Treaty, on the proposal from the Commission to the Council for a Regulation establishing a Community Customs Code.

At the sitting of 14 May 1990, the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Budgetary Control and the Committee on External Economic Relations for their opinion.

At its meeting of 23 May 1990, the Committee on Legal Affairs and Citizens' Rights appointed Lord INGLEWOOD rapporteur.

At its meetings of 26-28 September 1990, 28/29 November 1990, 7-9 January 1991 and 29/30 January 1991, it considered the Commission proposal and at the last three meetings a draft report. Furthermore at its meeting of 30/31 October 1990, it decided to join, in its examination of the Commission proposal, the motion for a resolution by Mr LUSTER pursuant to Rule 63 of the Rules of Procedure on the publication of amendments to legal provisions, which Parliament, at the sitting of 12 October 1990, had referred to the Committee on Legal Affairs and Citizens' Rights (a copy of the motion for a resolution is attached hereto, Doc B3 -0008/89).

At its meeting of 29/30 January 1991, the Committee on Legal Affairs and Citizens' Rights adopted the draft legislative resolution unanimously.

The following took part in the vote: STAUFFENBERG, chairman; VAYSSADE, first vice-chairman; ROTHLEY, second vice-chairman; INGLEWOOD, rapporteur; BANDRES MOLET, BONTEMPI, BRU PURON, CASINI, FALCONER, FERRI, FONTAINE, GAIBISSO, GRUND, McINTOSH, RANDZIO-PLATH (deputizing for HOON), SALEMA and VAN DER BRINK.

The opinions of the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on External Economic Relations are attached.

The report was tabled on 31 January 1991.

The deadline for tabling amendments has been fixed for Thursday, 14 February 1991 at noon.

A.

AMENDMENTS

Proposal from the Commission to the Council for a Regulation
establishing a Community Customs Code

Commission text¹

Amendments

(Amendment No. 1)

Third recital

Whereas, based on the concept of a single internal market, the Code must contain the general rules and procedures which ensure the implementation of the tariff and other measures introduced at Community level in connection with trade in goods between the Community and third countries; whereas it must cover, among other things, the implementation of common agricultural and commercial policy measures taking into account the necessities of these common policies;

Whereas, based on the concept of a single internal market, the Code must contain the general rules and procedures which ensure the implementation of the tariff and other measures introduced at Community level in connection with trade in goods between the Community and third countries; whereas it must cover, among other things, the implementation of common agricultural and commercial policy measures taking into account the specific provisions of these common policies;

(Amendment No. 2)

Fifth recital

Whereas it would appear advisable to make it clear that this Code is applicable without prejudice to specific provisions laid down in other fields; whereas such specific rules may exist or be introduced in the context, inter alia, of legislation relating to agriculture, statistics, commercial policy or own resources;

Whereas it would appear advisable to make it clear that specific rules may exist or be introduced in other areas, especially in the context of legislation relating to agriculture, statistics, commercial policy or own resources; whereas their principles should therefore be incorporated and their compatibility with the customs code ensured;

¹ For full text see COM (90) 71 or OJ No. C 128, 23.5.1990, p. 1

(Amendment No. 3)

After fifth recital add new recital

Whereas the proper functioning of the single internal market requires reinforcement and greater uniformity of controls at the external frontiers of the Community and whereas to this end provisions must be laid down concerning:

(a) minimum standards and the harmonization of methods of customs control used by national administrations,

(b) coordination between the customs authorities of the Member States, and

(c) supervision by, and final responsibility of, the Commission.

(Amendment No. 4)

After seventh recital add new recital

Whereas in view of the great importance of free zones and free warehouses to the Community's external trade, customs formalities and checks should be avoided or at least kept to a minimum;

(Amendment No. 5)

After eighth recital add new recital

Whereas, when adopting implementing measures under the Code, the Commission and the Customs Code Committee must, wherever possible, strive to prevent all fraud and irregularities likely to be detrimental to the general budget of the European Communities;

Commission text

Amendments

(Amendment No. 6)

After eighth recital add further new recital

Whereas Regulation No. 1552/89 on the system of own resources and this Code should in juxtaposition guarantee effective monitoring of all Community duties; whereas, to this end, it must be specified that the Community duty becomes payable at the moment when the customs debt is incurred, and wherein accounting arrangements must be improved, particularly prior to assessment, so that the Community is in a position to ensure that all customs debts are recorded, the corresponding duties are entered in the accounts and assessed and, finally, the own resources due are made available.

(Amendment No. 7)

Article 1(2)a (new)

2a. The administrative provisions adopted by the Commission in accordance with the procedure defined in Article 255 shall form an integral part of customs regulations as a whole.

(Amendment No. 8)

Article 2(2)a (new)

2a. National laws, regulations and administrative provisions shall be adapted to meet the requirements of Community regulations. The Commission shall at regular intervals review the national provisions of which it shall be notified by the Member States, inform the Member States of the adjustments it considers necessary to ensure conformity with Community regulations, including the Community administrative provisions adopted by the Commission in accordance with the procedure laid down in Article 255.

Commission text

Amendments

(Amendment No. 9)
Article 3(1), third indent

- the German territories to which the Treaty establishing the European Economic Community applies, except the island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation);

- the Federal Republic of Germany except the island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation);

(Amendment No. 10)
Article 4

This Code shall be without prejudice to the arrangements for German internal trade within the meaning of the Protocol on German internal trade and connected problems.

Deleted

(Amendment No. 11)
Article 6(3)

3. Save in the cases referred to in Article 62(2)(b) and (3), a representative must be established within the Community.

3. Member States may restrict the right to make customs declarations in their country under

- either the direct representation procedure
- or the indirect representation procedure

to customs agents exercising their profession there.

This provision shall not apply to
- employees of the holder of the goods,
- transport undertakings or
- recognized customs agents from another Member State.

Commission text

Amendments

(Amendment No. 12)
Article 6(5)a (new paragraph)

5a. Notwithstanding the provisions of Title VI, Chapter 2, a representative, whether the representation is direct or indirect, who makes a false or erroneous declaration, resulting in a diminution of the Customs debt or in an excessive export refund or other subsidy under the Common agricultural policy being payable or paid, shall be liable both jointly and severally with the person, who is represented, in accordance with the provisions in force.

(Amendment No. 13)
Article 12(1) sub-para. 1

1. Any interested person may request from the customs authorities information concerning the application of customs legislation.

1. Any interested person may request from the customs authorities information, including tariff information, concerning the application of customs legislation.

(Amendment No. 14)
Article 12(2)

2. The information shall be supplied to the applicant free of charge. However, where costs are incurred by the customs authorities, the applicant may be charged the relevant amount.

2. The information shall be supplied to the applicant free of charge. However, where costs are incurred as a result of analysing or obtaining an expert's report on any samples sent to the customs authority and returning them to the applicant, such expenditure may be charged to the latter.

Commission text

Amendments

(Amendment No. 15)

Article 62(1)

1. A customs declaration may be made by any person who is able to present the goods in question or to have them presented to the competent customs authority, in accordance with the provisions laid down to that effect, together with all the documents which are required to be produced by the rules governing the customs procedure requested for those goods.

1. Without prejudice to Article 6(3), a customs declaration may be made by any person who is able to present the goods in question or to have them presented to the competent customs authority, in accordance with the provisions laid down to that effect, together with all the documents which are required to be produced by the rules governing the customs procedure requested for those goods.

(Amendment No. 16)

Article 68(3)

3. Provided that samples are taken in accordance with the provisions in force, the customs authorities shall not be liable for payment of any compensation in respect thereof but shall bear the costs of their analysis or examination.

3. Provided that samples are taken in accordance with the provisions in force, the customs authorities shall not be liable for payment of any compensation in respect thereof but shall bear the costs of their analysis or examination, except where a false or incorrect customs declaration is thereby discovered.

Reasonable costs incurred by the customs authorities or other authority responsible for carrying out the monitoring, provided for under Council Regulation (EEC) No 386/90, may be deducted from the export refund or other subsidy payable.

Commission text

Amendments

(Amendment No. 17)
Article 109(2)a (new)

2a. Where, for the sake of simplicity, the bases of assessment of the said goods are established when the goods are placed under the customs warehousing procedure, removal from the customs warehouse shall be permitted without appearance of the goods before the customs for clearance and before submission of the relevant declaration. For the purpose of determining import duty it shall be assumed that the bases of assessment were known at the time referred to in Article 198, unless the declarant requests that more favourable bases of assessment be applied when the goods are released for free circulation and can be checked without the goods being inspected, or unless the customs office subsequently determines other bases of assessment.

(Amendment No. 18)
Article 161(5)

5. The export declaration may be required to be lodged at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment.

The relevant cases and conditions shall be determined in accordance with the procedure of the Committee.

5.The export declaration shall be lodged at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment.

Exceptions shall be determined in accordance with the procedure of the Committee.

(Amendment No. 19)
Article 161(5)a (new)

5a. When goods are exported under the transit procedure, export clearance shall be compulsory both at the customs office of dispatch and at the office of exit.

Commission text

Amendments

(Amendment No. 20)

Article 163(1) new sub-paragraph

If goods are carried by sea - except by agreed liner services - between ports within the customs territory of the Community, they shall be deemed to be non-Community goods, except in cases where it can be demonstrated that they are Community goods

(Amendment No. 21)

Article 164, sub-para (a)

Free zones and free warehouses are parts of the customs territory of the Community or premises situated in that territory and separated from the rest of it in which:

(a) non-Community goods are subject neither to import duties nor to commercial policy measures;

Free zones and free warehouses are parts of the customs territory of the Community or premises situated in that territory and separated from the rest of it in which:

(a) non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the customs territory of the Community provided they are not released for free circulation or entered under another customs procedure under the conditions laid down in this Regulation or illegally used or consumed;

(Amendment No. 22)

Article 164 new sub-para

In a free zone or free warehouse, no customs formalities or controls shall apply to the entry, holding or removal of goods other than as provided in this regulation.

(Amendment No. 23)
Article 201(2) a (new)

2a. Compensatory interest shall be applied on a case-by-case basis in the manner provided for in the implementing provisions defined in Article 255, in order to avoid any unfair financial advantage being obtained by deferment of the date on which the customs debt is incurred.

(Amendment No. 24)
Article 209

The customs debt referred to in Articles 198 to 202 and 206 to 208 shall be incurred even if it relates to goods subject to measures of prohibition or restriction on importation or exportation of any kind whatsoever.

Community duty shall become payable when the customs debt referred to in Articles 198 to 202 and 206 to 208 is incurred. This debt shall be incurred even if it relates to goods subject to measures of prohibition or restriction on importation or exportation of any kind whatsoever.

(Amendment No. 25)
Article 217(2) 2nd indent

2. Subsequent entry in the accounts shall not occur where:

- the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not have been reasonably detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

2. Subsequent entry in the accounts shall not occur where:

- the amount of duty legally owed failed to be entered in the accounts as a result of incorrect information given under Articles 12 and 13 or other error on the part of the customs authorities which could not have been reasonably detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

(Amendment No. 26)

Article 241(3)a (new paragraph)

3a. The grounds, on which a person may base an appeal under Article 241(3)(a), shall include:

- a failure on the part of the customs authorities to give adequate reasons for a decision,
- a misuse of powers,
- infringement of the provisions in force.

(Amendment No. 27)

Article 251

Where customs legislation grants the customs authorities the discretionary power to assess the factual circumstances on which they base their decisions, the detailed rules for exercising the right of appeal against such decisions may be different from those laid down in this Title.

Deleted

(Amendment No. 28)

Article 257, 3rd, 7th and 18th indent

The following Regulations and Directives are hereby repealed:

- Council Regulation (EEC) No. 222/77 of 13 December 1976 on Community transit; as last amended by Regulation (EEC) No. 1674/87;

- Council Directive of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation (79/695/EEC); as last amended by the Act of Accession of Spain and Portugal;

- Council Regulation (EEC) No. 1031/88 of 18 April 1988 determining the persons liable for payment of a customs debt; as amended by Regulation (EEC) No. .../.. of ...

The following Regulations and Directives are hereby repealed:

- Council Regulation (EEC) No. 2726/90 of 17 September 1990 on Community transit (OJ No L 262, 26.9.1990, p.1;

- Council Directive of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation; as last amended by Directive (90/504/EEC) (OJ No L 281, 12.10.1990, p.28);

- Council Regulation (EEC) n°1031/88 of 18 April 1990 determining the persons liable for payment of a customs debt; as last amended by Regulation (EEC) No 1716/90 (OJ No L 160, 26.6.1990, p.6).

Commission text

Amendments

(Amendment No. 29)

Article 257, indents 25a and 25b (new)

The following Regulations and Directives are hereby repealed:

- Council Regulation (EEC) No 4046/89 of 21 December 1989 on the security to be given to ensure payment of a customs debt (OJ No L 388, 30.12.89; p.24)

- Council Regulation (EEC) No 1715/90 of 20 June 1990 on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature (OJ No L 160, 26.6.1990, p.1).

DRAFT LEGISLATIVE RESOLUTION
(COOPERATION PROCEDURE: First reading)

embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a Regulation establishing a Community Customs Code

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(90) 71 - SYN 253)¹,
 - having been consulted by the Council pursuant to Articles 28, 100A and 113 of the EEC Treaty (Doc. C3 -0103/90),
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on External Economic Relations (Doc. A3 -0011/91),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
 4. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 128, 23.5.1990, p. 1

