

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 792 final

Brussels, 7 December 1982

Proposal for a  
COUNCIL REGULATION (EEC)

determining the persons liable for payment of a customs debt

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(submitted to the Council by the Commission)

COM(82) 792 final

Explanatory memorandum

1. Council Directive 79/623/EEC of 25 June 1979<sup>(1)</sup> harmonized provisions laid down by law, regulation or administrative action relating to customs debt. Henceforth, every situation giving rise to a customs debt is defined at Community level.
  
2. Elementary logic requires that, where a customs debt exists, the precise identity of the person liable for its payment should be known. Directive 79/623/EEC laid down a whole list of cases in which a customs debt is incurred. It now remains to be determined, therefore, who is liable for the payment of the debt in each such case. In view of the diversity of the Member States' provisions on the subject, the enactment of a Community Regulation determining the persons liable for payment of a customs debt is not, however, dictated merely by logic. Its purpose is above all to ensure in this field equal treatment for all commercial operators in the Community, by preventing some of them from enjoying greater opportunities than others of avoiding payment of a customs debt because they happen to be in one Member State rather than another.

This proposal for a Regulation does not merely satisfy this primary objective of harmonizing customs rules, but is also designed to safeguard under the most favourable conditions the economic function of import and export duties and make it easier for Member States' authorities to assess and collect the Community's own resources.

3. Following closely the provisions of Directive 79/623/EEC, this proposal for a Regulation deals separately with the case of persons liable for payment of a customs debt on importation and that of persons liable for payment of a customs debt on exportation.

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(1) OJ No L 179, 17.7.1979, p. 31

I. Persons liable for payment of a customs debt on importation

(a) Case of the release of goods for free circulation

4. The release for free circulation (by means of a customs entry) of goods imported from third countries is the principal origin of customs debt on importation. Such release for free circulation takes place in differing legal situations. In particular, in view of the complexity of the administrative formalities which have to be completed, the consignee of goods coming from third countries often entrusts the task of making the entry for release of the goods for free circulation to a representative, generally a professional agent. The terms of such representation may vary, not only from one Member State to another, but also within a Member State owing to the various types of legal representation available under civil and commercial law.

By establishing the principle that the person liable for payment of a customs debt incurred by the release of goods for free circulation is, in all cases, the person in whose name the customs declaration was made (cf. Article 2(1)), this proposal for a Regulation takes account of the various types of legal representation and the obligations which ensue under civil or commercial law for each of the parties concerned (agent and principal).

5. This principle, which has the advantage from the authorities' point of view of being extremely simple to apply, is extended to cover cases in which the type of legal representation chosen leads the agent to make the customs declaration in his own name, but on behalf of another person. In this case, the need for the effective collection of import duties had induced the Commission to propose that the principal should also be liable for payment of the customs debt (cf. Article 2(1)(a)).

This provision is fully justified from the economic point of view as it is the principal who not only must bear, as a result of his contract with his agent, final responsibility for the duties owed (the agent securing repayment by the other of the sums he himself has advanced) but also acquires full power of disposal over the goods which are handed over to him after customs clearance by his agent. It would therefore be quite unjustified if, in the event of the latter's default, the authorities could not recover the duties from the person on whose behalf the customs declaration was made.

The same rule is laid down (cf. Article 2(1)(b)), for the same reasons, where the release for free circulation is carried out under one of the simplified procedures provided for in Articles 19 and 20 of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation <sup>(1)</sup> (case in which the customs entry is made by a person other than the person who obtained the authorization to use such simplified procedures).

6. There can, of course, be no question of rendering liable for payment of a customs debt a person in whose name a declaration was made by another person acting without authority. In this case, only the person who made the customs declaration must be required to pay the customs debt (cf. Article 2(1)(c)).

7. Lastly, where, under the rules in force, goods are released for free circulation without any need to lodge a customs declaration (regularization by means of their release for free circulation of the position of goods originally placed under a different customs procedure), the person who can be rendered liable for payment of the customs debt incurred in this situation can clearly be none other than the person who, at the time when the release for free circulation takes place, is required to comply with the obligations imposed on him as a result of the placing of the goods under the previous customs procedure (cf. Article 2(2)).

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(1) OJ No L 205, 13.8.1979, p. 19

(b) Other situations giving rise to customs debt  
on importation

8. The cases other than the release of goods for free circulation which give rise to a customs debt on importation are listed in Article 2(b) to (e) of Directive 79/623/EEC on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt. Each case involves failure to comply with an obligation laid down in the customs rules.

A distinction must be made, however, between :

- (a) the general obligation to present at customs all goods brought into the customs territory of the Community and keep them under customs supervision until such time as a customs destination is assigned to them; and
- (b) the special, personal obligations which stem from the application to the persons concerned of the provisions concerning the various customs procedures under which goods lawfully brought into the customs territory of the Community may be placed.

In order to ensure that customs debts incurred by failure to comply with these two sets of obligations are recovered as efficiently and speedily as possible, the Commission proposes that the following provisions be adopted :

9. In the case of a customs debt incurred by the non-fulfilment of the general obligation to present goods at customs and keep them under customs supervision (this amounts, in effect, to the offence of smuggling and the fraudulent removal of goods from customs control), this proposal provides (Articles 3 and 4(1)) that the person liable for payment of such debt is the person who performed the act which caused it to be incurred.

Any persons who knowingly participated, in any way whatsoever, in the act in question (accomplices) or derived an advantage therefrom (organizers of the operation, receivers, middlemen, etc.) are also liable for payment of such a customs debt.

Since the act giving rise to the customs debt is as a rule, in this type of case, a criminal offence, it is also provided that, in so far as the rules of criminal law allow persons other than those referred to above to be implicated, those persons are also liable for payment of the customs debt.

The customs debt on importation incurred in such circumstances can thus be recovered from the largest possible number of individuals.

10. In the case of a customs debt incurred by the non-fulfilment of a special obligation stemming from the application of the provisions concerning a customs procedure or specific customs arrangements (e.g. the obligation to assign goods to a particular use), this proposal for a Regulation provides (Articles 4(2), 5 and 6) that the person liable for payment of the customs debt is the person who, through the operation of the provisions concerning the customs procedure or customs arrangements in question, was personally responsible for carrying out the obligation which was not complied with.

Apart from the fact that such a rule is in perfect accord with the terms of the "agreement" concluded between the authorities and the person who received the authorization to apply the customs procedure or arrangements in question, it relieves the authorities of the need themselves to determine whether the person truly responsible for the non-fulfilment of the obligation in question is a third party (which would mean having to delay the assessment and recovery of the customs debt pending the outcome of the enquiry).

Where appropriate, the person liable for payment of the customs debt has, of course, a right of appeal under civil law against the actual perpetrator of the act which gave rise to the customs debt.

## II. Persons liable for payment of a customs debt on exportation

11. The situations which give rise to a customs debt on exportation are less numerous and are encountered much less frequently than those which give rise to a customs debt on importation (cf. Article 5(a) and (b) of Directive 79/623/EEC). They are, however, quite similar. Thus this proposal for a Regulation lays down, in order to determine the persons liable for payment of a customs debt on exportation, rules similar to those which it lays down for the purpose of determining the persons liable for payment of a customs debt on importation (Article 7(1)(a) in the case of the export of goods accompanied by a customs declaration; Article 7(1)(a) and (2) in the case of the unlawful export of goods; and Article 8 in other cases giving rise to a customs debt on exportation).

## III. Joint and several liability of various persons liable for payment of a single customs debt

12. In all cases where, by virtue of the same legal situation, a customs debt is incurred by several persons, this proposal provides that the various persons concerned shall be jointly and severally liable for payment of the debt. This rule will enable the authorities, if they consider it necessary, to institute proceedings simultaneously and immediately against the various persons liable for payment of the customs debt. It will therefore relieve them of the need to exhaust in respect of each such person every means of legal redress with a view to recovering the sum due before being able to proceed against another person. This will help avoid lengthy delays in the recovery by the competent authorities

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of sums due by way of import or export duties which they have had to assess and consequently transfer to the budget of the Communities within the periods prescribed.

IV. Compliance with certain specific provisions of civil and commercial law, particularly with regard to the transfer of obligations

13. From the point of view of private law, it is only natural that certain specific civil or commercial law provisions relating to civil obligations should apply irrespective of the customs rules defining the identity of the person liable for payment of the debt. This is the case, for example, with the rules relating to the transfer of obligations by way of succession or subrogation, both by operation of law and by agreement (e.g. in the event of the take-over of one company by another). The relevant provision of this proposal is Article 9(a).

V. Compliance with the provisions concerning guarantors

14. Numerous provisions of Community customs law make the use of customs arrangements or a special customs procedure conditional on the provision of a guarantee. This often takes the form of a guarantor (a third party guarantees the fulfilment of the obligations entered into by the person concerned, such as the payment of any import or export duties which should fall due).

As stipulated in Article 9(b), this proposal for a Regulation in no way affects the special obligations to which guarantors are subject.



15. Based on Articles 43 and 235 of the EEC Treaty, this proposal for a Regulation requires the opinion of Parliament. In view of its purpose, the Commission considers it advisable to seek also the opinion of the Economic and Social Committee.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 235 thereof,

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

Having regard to the Opinion of the European Parliament<sup>(2)</sup>,

Having regard to the Opinion of the Economic and Social Committee<sup>(3)</sup>,

Whereas 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<sup>(4)</sup> defined, inter alia, the various situations giving rise to a customs debt on importation or exportation;

Whereas, in order to ensure that the abovementioned Directive has identical legal and economic effects throughout the Community, it is necessary to determine in each case in which a customs debt arises the person or persons liable for payment of such debt;

Whereas simple rules must be laid down in this field which enable the authorities responsible for assessing and recovering customs debts to act with the utmost efficiency; whereas the same principles should be adopted both for customs debts on importation and for customs debts on exportation;

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(1) OJ No C

(2) OJ No C

(3) OJ No C

(4) OJ No L 179, 17.7.1979, p. 31

Whereas, in the case of a customs debt resulting from acceptance by the competent authority of a customs declaration for release for free circulation or for export, the person liable for payment of such debt should be the person in whose name the declaration was made; whereas this principle makes it possible to take account of the various types of representation available for completing customs formalities; whereas, where the person making the declaration has stated that he was acting in his own name but on behalf of another person, it is nevertheless justifiable to consider the latter also liable for payment of the customs debt in so far as the person who made the declaration had received authorization to do so; whereas the same should hold true in the event of the implementation of the special arrangements referred to in Articles 19 and 20 of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation <sup>(1)</sup> and in Articles 18 and 19 of Council Directive 81/177/EEC of 24 February 1981 on the harmonization of procedures for the export of Community goods <sup>(2)</sup> where the holder of the authorization relating thereto is a different person from the one in whose name the declaration was made;

Whereas, in the case of a customs debt resulting from the unlawful introduction of goods into the customs territory of the Community, the removal of goods from customs supervision or the unlawful export of goods from the customs territory of the Community, not only the person who committed the act which gave rise to the customs debt but also all persons who knowingly participated therein or derived an advantage therefrom should be considered liable for payment of such debt;

Whereas, in the case of a customs debt resulting from the non-fulfilment of a special obligation stemming from the application of the provisions concerning a special customs procedure or arrangements, the person who, through the operation of the provisions governing the customs procedure or arrangements in question, was personally responsible for performing the obligation which was not complied with should be liable for payment of such customs debt;

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(1) OJ No L 205, 13.8.1979, p. 19

(2) OJ No L 83, 30.3.1981, p. 40

Whereas in all cases in which the same legal situation gives rise to a customs debt payable by several persons, the latter should be liable jointly and severally for payment of such debt in order to enable the competent authorities to ensure the recovery of customs debts under the most favourable conditions;

Whereas this Regulation cannot prevent the application of certain specific rules of civil or commercial law in force in the Member States, particularly as regards the transfer of obligations; whereas it likewise cannot affect the special obligations to which guarantors are subject;

Whereas it is necessary to safeguard the uniform application of this Regulation and to provide to that end for a Community procedure enabling the rules for its application to be adopted within an appropriate period; whereas the Committee on General Customs Rules set up by Article 24 of Directive 79/695/EEC is the appropriate body to organize close and effective collaboration between the Member States and the Commission in this field;

Whereas this Regulation concerns the determination of the persons liable for payment of a customs debt, whether it results from the implementation of the common agricultural policy or from the implementation of the Treaty provisions concerning the customs union; whereas this action is necessary to attain, in the course of the operation of the common market, one of the objectives of the Community; whereas the Treaty has not provided, in the case of the customs union, the necessary powers for this purpose; whereas it is therefore necessary to base this Regulation also on Article 235 of the Treaty,

HAS ADOPTED THIS REGULATION :

Article 1

1. This Regulation determines the persons liable for payment of a customs debt.

2. For the purposes of this Regulation :

- (a) "person" means both a natural and a legal person;
- (b) "customs debt" means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply under the provisions in force to goods liable to such duties;
- (c) "import duties" means both customs duties and charges having equivalent effect and agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements which apply to certain goods resulting from the processing of agricultural products;
- (d) "export duties" means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements which apply to certain goods resulting from the processing of agricultural products;

TITLE I

Persons liable for payment of a customs debt  
on importation

Article 2

1. Where a customs debt arises pursuant to Article 2(a) or (f) of Directive 79/623/EEC, the person liable for payment of such debt shall be the person in whose name the declaration was made.

However,

- (a) where, pursuant to the provisions in force, the person who made a declaration in his own name stated that he was acting on behalf of another person, the latter shall also be jointly and severally liable for payment of the customs debt;
- (b) where goods are released for free circulation under the special arrangements referred to in Articles 19 and 20 of Council Directive 79/695/EEC, the authorized person shall also be jointly and severally liable for payment of the customs debt where he is a different person from the person referred to in the first subparagraph;
- (c) where the customs declaration was made in the name of another person by a person lacking the necessary authorization, the latter alone shall be liable for payment of the customs debt.

2. Where, pursuant to the provisions in force, the customs authorities authorize the release for free circulation of goods already subject to a customs procedure without requiring the making of a declaration of release for free circulation, the person liable for payment of the customs debt arising in this situation shall be the person who, at the time of such release for free circulation, is required to comply with the obligations attaching to the customs procedure in question.

The same rules shall apply, where appropriate, to products resulting from the processing of the goods concerned and to the waste and scrap resulting from their destruction.

### Article 3

Where a customs debt has arisen pursuant to Article 2(b) of Directive 79/623/EEC, the person who introduced the goods unlawfully into the customs territory of the Community shall be liable for payment of such debt.

The following shall also be jointly and severally liable for payment of such debt :

- (a) any persons who participated in such introduction of the goods into the Community knowing that it was unlawful and any persons who acquired or possessed the goods in question and knew when they acquired or received the goods that they had been unlawfully introduced into the customs territory of the Community;

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- (b) any other persons who, under the provisions in force in the Member States, are liable by reason of the unlawful introduction of the goods into the customs territory of the Community.

Article 4

1. Where a customs debt has arisen pursuant to Article 2(c) of Directive 79/623/EEC, the person who removed the goods from customs supervision shall, subject to paragraph 2, be liable for payment of such debt.

The following shall also be jointly and severally liable for payment of such debt :

- (a) any persons who participated in the removal of the goods knowing that they were being removed from customs supervision and any persons who acquired or possessed the goods in question and knew when they acquired or received the goods that they had been removed from customs supervision;
- (b) any other persons who, under the provisions in force in the Member States, are liable by reason of the removal of the goods from customs supervision.

2. Where the goods removed from customs supervision were placed

- a) in temporary storage or under the customs warehousing procedure in premises the operator of which has given an undertaking to the customs authorities that he will be responsible for the legality of operations carried out in those premises;
- b) under the customs warehousing procedure under conditions other than those referred to in a) or under another customs procedure,

the person liable for payment of customs debt shall be:

- in cases referred to in a), the operator of the premises used for temporary storage or for customs warehousing;
- in cases referred to in b), the person who deposited the goods in the warehouse or the holder of the authorization for the customs procedure in question.



Article 5

Where a customs debt has arisen pursuant to Article 2(d) of Directive 79/623/EEC, the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed or to comply with the conditions laid down for the grant of that procedure, shall be liable for payment of such debt.

Article 6

Where a customs debt has arisen pursuant to Article 2(e) of Directive 79/623/EEC, the person who is required, under conditions laid down by the competent authorities, to use the goods in question for the purposes stipulated, shall be liable for payment of such debt.

TITLE II

Persons liable for payment of a customs debt on exportation

Article 7

1. Where a customs debt has arisen pursuant to Article 5(a) of Directive 79/623/EEC, the person liable for payment of such debt shall be :

(a) where the goods in question have been the subject of an export declaration, the person in whose name the declaration was made.

However,

- where, pursuant to the provisions in force, the person who made the declaration in his own name stated that he was acting on behalf of another person, the latter shall also be jointly and severally liable for payment of the customs debt;

- where goods are exported under the simplified procedures referred to in Articles 18 and 19 of Directive 81/177/EEC, the person authorized to employ such simplified procedures shall also be jointly and severally liable for payment of the customs debt where he is a different person from the person in whose name the declaration was made;
- where the customs declaration was made in the name of another person by a person lacking the necessary authorization, the latter alone shall be liable for payment of the customs debt.

(b) where the goods in question have not been the subject of an export declaration, the person who unlawfully exported the goods from the Community.

2. In the cases referred to in paragraph 1(b), the following shall also be jointly and severally liable for payment of the customs debt :

- (a) any persons who participated in the export of the goods from the Community, knowing that it was unlawful;
- (b) any other persons who, under the provisions in force in the Member States, are liable by reason of the unlawful export of the goods from the Community.

#### Article 8

Where a customs debt has arisen pursuant to Article 5(b) of Directive 79/623/EEC, the person liable for payment of such debt shall be determined under the same conditions as those laid down in Article 7(1)(a).

TITLE III

Special provisions

Article 9

The provisions of Titles I and II shall apply without prejudice to :

- (a) the provisions laid down in the Member States on the basis of the civil and commercial law rules of the Member States which, in certain special circumstances, require persons other than those referred to in this Regulation to pay a customs debt;
- (b) the obligations to which guarantors are subject in respect of payment of a customs debt which they have guaranteed.

TITLE IV

Final provisions

Article 10

- 1. The Committee on General Customs Rules set up by Article 24 of Directive 79/695/EEC may examine any question concerning the application of this Regulation which is raised by its chairman either on his own initiative or at the request of a Member State.
- 2. The provisions required for implementing this Regulation shall be adopted in accordance with the procedure laid down in Article 26(2) and (3) of Directive 79/695/EEC.

Article 11

This Regulation shall enter into force on 1 July 1984.

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

Done at Brussels,

For the Council,

The President