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Report

drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the European Communities to the Council (Doc. 1-1166/82 - COM(82) 792 final) for a regulation determining the persons liable for payment of a customs debt

Rapporteur: Mr F. D'ANGELOSANTE

EXPLANATORY STATEMENT

1. Community legislation on customs debt comprises a complex system of rules which supplement and, to some extent, replace the relevant national regulations.

On 25 June 1979, the Council adopted Directive 79/623/EEC, which harmonizes national provisions in respect of:

- '- the incurrence of a customs debt,
- the moment to be taken into consideration for the determination of the amount of a customs debt and its liability for payment,
- the extinction of a customs debt.' (1)

2. However, in the absence of general Community rules on the matter, it is difficult to establish who exactly is liable for payment of customs debts. The present proposal seeks to remedy this deficiency by ensuring equality of treatment for all commercial operators and by making it easier for the national customs authorities to collect the taxes which constitute the Community's own resources. (2)

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(1) See Article 1(1) of 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 (OJ No. L 179 of 17 July 1979, p.31).

(2) See paragraphs 1 and 2 of the explanatory memorandum accompanying the proposal.

3. The proposal for a regulation distinguishes between customs debts on importation and customs debts on exportation; the latter are less numerous than the former, but the rules to which they are made subject are similar (see Articles 7 and 8).
4. The proposal establishes the simple and clear rule that the person liable for payment of the customs debt shall be the person in whose name the declaration of the release of goods for free circulation was made (see Article 2).
5. Where the person who fills in the customs declaration states that he is acting on behalf of another person, the latter shall also be jointly and severally liable for payment of the customs debt (see Article 2(1)(a)). Clearly, where a declaration is made in the name of another person by a person lacking the necessary authorization, the latter alone shall be liable (see Article 2(1)(b) and (c)).
6. Articles 3 and 4 concern cases where the customs debt arises without the required declaration having been made, consequent upon the unlawful introduction or removal of dutiable goods. In such cases, the principle laid down is that the perpetrator of the unlawful act shall be liable for payment of the customs debt. It is also proposed that accomplices, receivers of the goods, etc. should be jointly and severally liable for payment of such debt. Other particular cases are covered by Articles 5 and 6.
7. Special circumstances covered by national law, the powers of the Committee on General Customs Rules (1) and provisions concerning the entry into force of the regulation are covered by Articles 9, 10 and 11 respectively.

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8. The Legal Affairs Committee is convinced that the regulation proposed by the Commission should be adopted. While it is true that, in an area as complicated as customs law, it is necessary to elaborate an integrated and codified body of legislation (or customs code), the work of the competent Community

(1) Set up by Article 24 of Directive 76/695/EEC (OJ No. L 205 of 13 August 1979, page 19 et seq.)

bodies (1) is so complex that it is unlikely to be completed in the near future. Hence the need for the rapid implementation of a number of partial, but important, proposals.

9. It is right of the Commission to propose a regulation, which is binding in its entirety and directly applicable in all Member States, since the directive tends to be applied differently and after the prescribed deadline (2) and as such is an unsuitable legal instrument for matters pertaining to the customs union.

In response to those who consider that a difficulty arises from the fact that 'the draft regulation refers to provisions in Directive 79/623/EEC which may not be known in that form to persons applying the laws in the individual Member States, in view of the fact that the provisions of the Directive have been adapted in line with national laws' (3), it must be stated that the Commission has announced that it is drawing up a proposal for a regulation which will be submitted as soon as possible to the Council and which reproduces exactly the provisions of Directive 79/623/EEC. Without prejudice to the opinion to be delivered by Parliament, the Legal Affairs Committee has no hesitation in declaring its support for the basic idea.

10. As for the Commission's decision to base its proposal on Articles 43 and 235 of the EEC Treaty, it has to be pointed out that, since it is strictly intended to offer an alternative basis ('... and this Treaty has not provided the necessary powers ...'), Article 235 cannot theoretically be used as a legal basis in conjunction with another article. However, as is explained with commendable clarity in the last recital of the preamble to the proposal for a regulation, Article 43 provides the basis for the payment of customs debts deriving from the implementation of the common agricultural policy, and Article 235 the basis for the payment of other customs debts. In these circumstances, the legal basis chosen is undoubtedly correct.

(1) It would appear that the Commission has initiated studies with a view to formulating a customs code.

(2) To give an apposite example, it is thought that 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 has not yet been incorporated into national law by all the Member States (Article 12 of the Directive required Member States to bring the necessary measures into force not later than 1 January 1982).

(3) See point 2.1.2. of the opinion of the Economic and Social Committee (OJ No. C 211 of 8 August 1983, page 1.)

11. Moreover, as far as the customs union is concerned, the Decision on the Replacement of Financial Contributions from Member States by the Communities' Own Resources (1) provides that 'revenue from ... Common Customs Tariff duties ... shall constitute own resources to be entered in the budget of the Communities'.

Consequently, quite apart from the legal basis proper, the Commission's proposal has a logical basis inasmuch as it is for the Community to legislate in matters which fall exclusively within its own sphere of competence, with the Member States acting, as it were, as tax collectors on its behalf.

12. The basic principle enunciated in Article 2, and the relevant necessary exceptions, the list of which would be completed by the Committee's amendment, deserve full endorsement.

13. To conclude, the Legal Affairs Committee approves the Commission's proposal, since its provisions will make for an improvement in the functioning of the customs union.

(1) See OJ No. L 94 of 28 April 1970, page 19, and the 1978 edition of the Treaties, page 843 et seq.

OPINION OF THE COMMITTEE ON BUDGETS

Letter from the committee chairman to Mrs VEIL, chairman
of the Legal Affairs Committee

Luxembourg, 17 June 1983

Subject: (a) a proposal for a regulation determining
the persons liable for payment of a customs
debt (Doc. 1-1166/82 - COM(82) 792 final)
(b) a proposal for a regulation on the security
to be given to ensure payment of a customs
debt (Doc. 1213/82 - COM(82) 792 final)

Dear Madam Chairman,

The Committee on Budgets considered the two abovementioned
proposals at its meeting of 16 June 1983.

The committee noted that these two Commission proposals
raised problems of a primarily legal nature, on which
it was not required to pronounce.

In the interests of equal treatment for the Member
States and Community citizens, the committee supports
the Commission's efforts to gradually harmonize the calculation
and collection of customs debt, within the meaning of
the provisions governing customs duties, which form part
of the Community's own resources.

The Committee on Budgets has in this connection
asked the Legal Affairs Committee to consider, for a
subsequent phase in the harmonization process, the possibility
of extending the Community's own resources to the fines
levied in cases of non-payment or delayed payment of
customs duties.

Yours sincerely,
(sgd) Erwin LANGE.

The following were present at the vote: Mr Lange, chairman; Mr Notenboom, vice-chairman; Mr Balfour, Mr Gabert (deputizing for Mr Orlandi), Mr Herman (deputizing for Mr Ryan), Mr R. Jackson, Mr Kellett-Bowman, Mr Newton Dunn, Mr Pfennig, Mr Protopapadakis, Mr Konrad Schön and Mr Van Rompuy (deputizing for Mr Barbagli).

OPINION

(Rule 101 of the Rules of Procedure)
of the Committee on Economic and Monetary Affairs

Draftsman: Mr ROGALLA

On 25 January 1983, the Committee on Economic and Monetary Affairs appointed Mr Dieter ROGALLA draftsman on Document 1-1166/82.

On 15/16 February 1983, the Committee on Economic and Monetary Affairs appointed Mr Dieter ROGALLA draftsman on Document 1-1213/82.

It considered the draft opinion at its meeting of 14, 15 and 16 June 1983 and adopted it unanimously.

Present: Mr MOREAU, chairman; Mr HOPPER and Mr DELEAU, vice-chairmen; Mr ROGALLA, draftsman (deputizing for Mr ROFFOLO); Mr BEAZLEY, Mr von BISMARCK, Mr DELOROZOY, Miss FORSTER, Mr de GOEDE, Mr HEINEMANN, Mr ALBERS (deputizing for Mr MIHR), Mr MÜLLER-HERMANN, Mr NYBORG, Mrs NIKOLAOU (deputizing for Mr PAPANTONIOU) and Mr VERGEER.

1. Council Directive 79/623/EEC of 25 June 1979¹ defines all the situations giving rise to a customs debt at Community level. Parliament approved this directive² which ought to make an important contribution to the establishment of the customs union.
2. The two Commission proposals under consideration^{3/4} fall logically within the framework of Directive 79/623/EEC which lays down a complete list of cases giving rise to a customs debt and is now to be supplemented by the introduction of Community regulations on the determination of the persons liable for payment of a customs debt³ and the security to be given to ensure payment of a customs debt⁴. These two proposals are closely interrelated since 'where the competent authority requires security to be given to ensure payment of a customs debt, such security shall be given by the person by whom that debt has been or may be incurred' (Art. 2 of Doc. 1-1213/82).
3. The Committee on Economic and Monetary Affairs feels that in considering this matter, and therefore also in drafting its opinion, it should concentrate primarily on the specifically economic aspects which fall within its terms of reference.
4. We should begin our examination of the two Commission proposals concerning the payment of a customs debt by considering their impact in terms of equal treatment for all economic operators in the EEC, the improvement of the economic function of import and export duties and the simplification of the assessment and collection of the own resources of the EEC by the authorities of the Member States.

A.

Proposal for a regulation determining the persons liable for payments of a customs debt (Doc. 1-1166/82)

5. The text of this proposal for a regulation deals separately with persons liable for a customs debt on importation and those liable for a customs debt on exportation but puts forward similar rules for both cases. This procedure is definitely the right one. The situations which give rise to a customs debt on importation are very similar to those which give rise to a customs debt on exportation although there are fewer instances of the latter and they occur less frequently.
6. It also draws a distinction between the release of goods for free circulation on the basis of a customs declaration and other cases giving rise to a customs debt on importation or exportation (non-fulfilment of an obligation laid down under EEC regulations).
7. In the more specific case of goods released for free circulation and exported on the basis of a customs declaration - which is the main source of customs debts on importation - the general principle put forward by the Commission that the person liable for the customs debt is the person in whose name the customs declaration is drawn up makes it possible to ensure equal treatment for economic operators in the EEC by contrast with the disparities between the current provisions in force in the Member States.

¹ OJ No. L 179 of 17 July 1979, page 31

² OJ No. C 232 of 11 October 1976, page 42

³ Doc. 1-1166/82

⁴ Doc. 1-1213/82

8. We should also approve the principle of joint and several liability of various persons liable for payment of a single customs debt contained in this proposal. By dispensing with the need for national authorities to exhaust every means of legal redress in proceedings against one debtor before being able to institute proceedings against another debtor, this provision would help avoid long delays in the collection of amounts due in respect of import and export duties and to transfer these sums to the Community budget within the periods prescribed.

B.

Proposal for a regulation on the security to be given to ensure payment of a customs debt (Doc. 1-1213/82)

9. A Community regulation in this area is a definite step in the right direction as regards the elimination of sources of unequal treatment of economic operators according to the Member State in which they carry out their professional activities. Specific texts forming part of Community customs regulations include provisions for security to ensure the payment of a customs debt on importation or exportation. This security may be compulsory where the customs debt has already been incurred, or optional in the case of the payment of a customs debt which is merely a possibility.
10. In the case of optional security, it is for the Member States to assess the need to provide security, according to their own criteria. At present, the arrangements for the provision of security, the calculation of the relevant amount and the ways in which it should be used are still covered by national provisions, which differ very widely, hence the need already stated to define Community parameters in this area.
11. Consideration of the mechanism proposed by the Commission suggests that the financial burden falling on economic operators as a result of requests for security will be quite substantial. Furthermore, this burden would vary according to the type of security used.
12. As regards the requirement of security, the text proposed by the Commission seems acceptable and represents a step in the right direction.
13. It is a good idea to include special provisions for not giving security when the person incurring or likely to incur a customs debt is a public administration. The solvency of public administrations cannot be called into doubt. In addition - and this is of considerable economic importance - Member States are not allowed to grant this exemption to public services or certain private undertakings operating in the national interest which would constitute unequal treatment in respect of the various economic operators.

14. In the case of the value of the security to be given, the rules laid down in the text under consideration are rightly based on the principle of solvency, i.e. the function of the security being to ensure payment of a customs debt which has been incurred or which is likely to be incurred.
15. However, Article 2(3) provides the competent authority with the possibility of waiving the requirement for provision of security where the amount of the debt does not exceed 100 ECU in view of the administrative burden of arranging and administering such security. The Committee on Economic and Monetary Affairs agrees in principle with this provision which is aimed at simplifying the administrative work of customs officials. It should be pointed out, however, that the amount proposed by the Commission in its text is so low that there seems to be little scope for applying this provision. The amount should therefore be raised to 500 ECU.
16. Furthermore the wording of Article 2(3) does not make it clear that it might be advisable not to request security even where this is compulsory and the amount fixed. It therefore seems appropriate to insert the word 'compulsory' before the word 'provision' in the first line.
17. As regards the actual provision of security, the Commission proposal seems quite appropriate particularly since under these provisions the person required to provide security is allowed to choose between various possibilities: cash deposit, guarantor and pledging securities which are guaranteed by the Member State.
18. The aim of preventing in principle the competent authorities of the Member States from systematically imposing a fixed amount of security is two-fold: to ensure equal treatment of economic operators in the Community and to enable these operators to avoid the most expensive type of security (cash deposit).
19. Article 10(2), however, deserves special attention. The Commission felt it necessary in this paragraph to allow the Member States to accept other types of security at the proposal of the operator. The Committee on Economic and Monetary Affairs would like to express its concern that this should not lead to unequal treatment of economic operators. Furthermore, the definition of 'types of security other than those referred to in Article 7' cannot be presented simply as an implementing measure and should therefore be included in the text.
20. Special attention should also be given to the provision in Article 9 that the guarantor must have his normal residence or an establishment in the Member State in which the security is given.
21. The Committee on Economic and Monetary Affairs wonders whether this provision does not in fact constitute a violation of Article 5 of the EEC Treaty concerning the freedom to provide services within the Community, an article which, according to the interpretation given by the Court of Justice in the Van Binsbergen Case of 7 December 1974, has direct effect.
22. We should also consider whether this provision is in line with Article 30 et seq. of the EEC Treaty as a provision affecting an ancillary measure relating to the free movement of goods. In Case No. 155/82 of 2 March 1983, the Court of Justice declared that measures which made access to the national market for imported products conditional on the exporter's having a guarantor or representative on the territory of the importing Member State are equivalent to quantitative restrictions.

23. Article 9 stipulates that the guarantor should be approved by the competent authority of the Member State in which the security is to be given. However, Council Directive 77/780¹ on the coordination of national provisions relating to the taking up and pursuit of the business of credit institutions stipulates that a bank which complies with the terms of the directive and with Community conditions, criteria and procedures cannot be made subject to national procedures as this would be in contravention of the freedom to provide services (Article 59 of the EEC Treaty) and the provisions of Directive 77/780.
24. In the light of the arguments set out above, the Committee on Economic and Monetary Affairs calls on the committee responsible to ask the Commission to reformulate the second sentence of Article 9 to bring it into line with the provisions of Articles 59 and 30 of the Treaty establishing the EEC and with the *acquis communautaire* in this field.

CONCLUSIONS

25. The Committee on Economic and Monetary Affairs approves the two Commission proposals which follow on logically from Directive 79/623/EEC². That directive laid down a list of cases giving rise to a customs debt and is now to be supplemented by Community regulations on the determination of the persons liable for payment of a customs debt³ and the security to be given to ensure payment of a customs debt⁴.

Proposal for a regulation determining the persons liable for payment of a customs debt (Doc. 1-1166/82)

26. The Committee on Economic and Monetary Affairs takes a favourable view of a Community regulation in this field to ensure equal treatment for all economic operators in the EEC, improve the economic function of import and export duties and simplify the assessment and collection of the resources earmarked for the Community budget.
27. The text proposed by the Commission certainly represents a step in the right direction, particularly as regards:
- the general principle that the person liable for payment of a customs debt is the person in whose name the customs declaration is drawn up as against the existing differences in the current provisions of the Member States;
 - the principle of the joint and several responsibility of the various persons liable for payment of a single customs debt: this will make it possible to avoid substantial delays in collecting amounts due in respect of import and export duties.

¹ : No. L 322 of 17 December 1977, p. 30

² OJ No. L 179 of 17 July 1979, p. 31

³ Doc. 1-1166/82

⁴ Doc. 1-1213/82

Proposal for a regulation on the security to be given to ensure payment of a customs debt (Doc. 1-1213/82)

28. The financial burden placed on economic operators as a result of a request for security and depending on the type of security used is quite considerable. The text proposed by the Commission therefore seems to contain desirable measures and represents a step in the right direction, i.e. towards the elimination of the sources of unequal treatment of economic operators according to the Member State in which they carry out their activities.
29. Moving on to consideration of the individual provisions of the text itself, however, the Committee on Economic and Monetary Affairs calls on the committee responsible, on the basis of the arguments set out in paragraphs 14-24 above, to invite the Commission to reformulate:
 - I. Article 2(3) by inserting the word 'compulsory' before the word 'provision' in the first line and by increasing the amount from 100 to 500 ECU;
 - II. the second sentence of Article 9 to bring it into line with the provisions of Articles 59 and 30 of the Treaty establishing the EEC and with the *acquis communautaire* in this field.