European Communities

EUROPEAN PARLIAMENT

Working Documents

1979 - 1980

3 December 1979 DOCUMENT 1-547/79

Report

drawn up on behalf of the Committee on External Economic Relations

on the proposal from the Commission of the European Communities to the Council (Doc. 1-266/79) for a directive on the harmonization of procedures for the exportation of goods

Rapporteur: Mr G.L. LEMMER

English Edition PE 59.446/fin.

By letter of 6 August 1979 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on the harmonization of procedures for the exportation of goods.

The President of the European Parliament referred this proposal to the Committee on External Economic Relations as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

On 5 October 1979 the Committee on External Economic Relations appointed Mr Lemmer rapporteur.

It considered this proposal at its meeting of 21 November 1979.

At that meeting it unanimously adopted the motion for a resolution and explanatory statement.

Present: Sir Fred Catherwood, chairman; Mrs Wieczorek-Zeul, Mr van Aerssen and Mr Seal, vice-chairmen; Mr Lemmer, rapporteur; Mr Almirante, Mr Bøgh, Mrs Carettoni Romagnoli, Mr de Courcy Ling, Mr Giumarra, Mr Kellett-Bowman, Mrs Lenz, Mr Louwes, Mr Majonica, Mr Martinet, Mrs Moreau, Mr Schmitt, Mr Seeler, Sir John Stewart-Clark and Mr Welsh.

The opinion of the Committee on Economic and Monetary Affairs is attached.

C O N T E N T S

A

The Committee on External Economic Relations hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the harmonization of procedures for the exportation of goods

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council[1],
- having been consulted by the Council pursuant to Article 100 of the Treaty establishing the European Economic Community (Doc. 1-266/79),
- having regard to the report of the Committee on External Economic Relations and the opinion of the Committee on Economic and Monetary Affairs (Doc. 1-547/79),
- having regard to the proposal from the Commission of the European Communities to the Council for a regulation on temporary importation arrangements (Doc. 244/78) and the report of the Committee on External Economic Relations on the same subject (Doc. 405/78)[2],

1. Welcomes the Commission's proposal inasmuch as it represents a further step towards the harmonization of legislation and successfully completes the Community's customs law;

2. Approves the Commission's proposal.

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[1] OJ No. C 201, 10.8.1979, p. 6

[2] OJ No. C 296, 11.12.1978, p. 52

B

EXPLANATORY STATEMENT

I. Object of the proposal:

1. - to secure the uniform application of the common policies relating to goods exported to non-Community countries and, in particular, of the measures adopted within the framework of the common agricultural policy;
   - to eliminate the discrepancies in the treatment of commercial operators in the Community at present arising from the fact that the customs formalities applicable to goods intended for export to non-Community countries differ from one Member State to another.

The proposal under consideration should be compared with the proposal from the Commission to the Council (Doc. 244/78) for a regulation on temporary importation arrangements. In its report on this proposal the Committee on External Economic Relations pointed out that 'the harmonization of the appropriate national arrangements has three objectives:

(a) to achieve uniform application by the Member States of the Common Customs Tariff (CCT) with respect to goods imported temporarily;
(b) to allow a temporary import licence issued by one Member State to apply throughout the Community;
(c) to counter distortions of the conditions of competition between, on the one hand, users of goods subject to the temporary importation arrangements and, on the other hand, users of similar goods obtained on the Community market'.

II. Legal basis of the proposal

2. The proposal is based on Article 100 of the Treaty of Rome, which stipulates that: 'The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.

The Assembly and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation.'

3. Article 29(a) specifies that the Commission must be guided by 'the need to promote trade between Member States and third countries'. The proposal under consideration thus conforms both to the letter and to the spirit of the Treaty of Rome. It should be noted that the obligation on the Council to act unanimously virtually precludes the possibility of a directive being adopted which would be prejudicial to the interests of any one Member State.

III. Content of the proposal

(1) The basic principle

4. This is quite straightforward. A description of the goods to be exported must be given on a special form and the goods produced at the customs office. The goods are exported after it has been established that the details as to their nature, quantity and value on the declaration form are correct. However simple it may appear at first sight, this procedure poses a number of practical problems which have been examined by the authors of the present proposal.

(2) Definition of the goods, territories and duties involved

5. Here only some recapitulation is called for since, while adding nothing new, the few details given in the proposal under consideration have the merit of being clear. Thus, for the purposes of the directive:

- the products concerned are 'products originating in Member States and ... products coming from third countries which are in free circulation in Member States' (Article 9(2) of the Treaty of Rome);
- the territories concerned are the 'custom territory' or the 'geographical territory of the Community as defined for purposes of of the common agricultural policy', depending on the nature of goods exported;
- the export duties concerned are in almost all cases levies and other charges provided for under the common agricultural policy or else specific measures applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products.

(3) Need for a measure of flexibility

6. The two main obstacles to the smooth application of the procedure chosen are, on the one hand, the limits to the storage capacity of customs offices and, on the other hand, the time taken up by examinations which, if too long, would needlessly hold up or, worse, prevent the exportation of some goods. It has accordingly been found necessary

to introduce a degree of flexibility into the procedure, in the first place by allowing the national authorities considerable freedom to decide on the location, date and conditions for the performance of checks and, secondly, by authorizing a simplified and more rapid procedure in some cases.

Consequently, the proposal provides that goods of low value, such as those contained in travellers' personal luggage, need not be the subject of a written declaration (Special Procedure: A). Furthermore, it authorizes the preparation of general, periodic or recapitulative declarations (Special Procedure: B) and the replacement by codified data of all or part of the information contained in the declaration (Special Procedure: C), and even goes so far as to allow goods to be exported before submission of the declaration (Special Procedure: D). As is to be expected, however, guarantees are required. Thus, for example, authorization to export goods before submission of the declaration is made conditional on the presentation of a commercial document containing the information necessary for the goods to be identified, together with an application for their exportation. Notwithstanding such conditions, however, trade would undoubtedly be speeded up by the use of these simplified procedures.

(4) Amendments to and cancellations of declarations

7. Although cancellations and amendments are unavoidable and at times necessary, they may be a waste of time both for the exporter and for the customs authorities and may even conceal fraudulent intentions, especially where exportation of the goods is likely to have consequences for the Community budget, either in terms of revenue or from the point of view of expenditures. Taking these factors into consideration, the proposal authorizes the amendment of declarations, but stipulates that:

'(a) the amendment must be requested before the customs authority has authorized exportation of the goods;

(b) the amendment may no longer be granted where the request is made after the customs authority has informed the declarant of its intention to examine the goods or of its own finding that the information in question was inaccurate;

(c) the amendment must not have the effect of making the declaration refer to goods other than those to which it originally referred'. (Special Procedure - Article 6).

8. Furthermore, a request for cancellation will not be met unless the declarant:

(a) 'provides the competent authorities with proof that the goods have not left the territory of the Community;

(b) produces to the said competent authorities all copies of the export declaration together with any other documents delivered to him on acceptance of the declaration;

(c) where appropriate, provides the competent authorities with proof that the refunds and other amounts granted on exportation of the goods in question have been repaid or that the necessary measures have been taken by the services concerned so that they may not be paid'. (Article 7).

Finally, cancellation of the declaration will on no account preclude the institution of legal proceedings against the declarant for attempted fraud.

IV. Clarification of a few points glossed over by the proposal but already covered by other Community texts

(1) Who is permitted to draw up a customs declaration?

9. In some Member States firms may delegate to their employees or to other agents the task of preparing the necessary documents, while in other Member States they are compelled to use licensed clearing agents. In a proposal for a regulation (EEC) defining the conditions under which a person may be permitted to make a customs declaration (which was presented by the Commission to the Council on 19 January 1979 and on which Parliament was duly consulted - report by the Committee on Economic and Monetary Affairs of 2 May 1979 - Doc. 103/79), it is specified that '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 the documents production of which is provided for by the provisions governing the customs procedure requested for the goods' (OJ No. C 29, 1.2.1979, p. 4 - Article 2). Article 5 provides that 'persons who have committed serious .... offences against customs, fiscal or economic legislation may be excluded from the right to declare on behalf of another person'.

(2) The export declaration form

10. In connection with an oral question with debate put by the Committee on Economic and Monetary Affairs, Mr GUNDELACH, Member of the Commission, made a statement on 13 October 1976 on the progress made towards a customs union. This was followed by an interim report by the same committee (Doc. 14/77), endorsing the proposal[1] without

[1] Proposal by the Commission instituting a Community export declaration form.

reservation 'on the basis that each small step forward is better than no step at all and that any simplification of paperwork will afford a measure of relief to small and medium-sized undertakings in particular'.

(3) Origin of the goods

11. This depends on the issue of a certificate. Under the terms of Commission Regulation (EEC) No. 582/69 of 26 March 1979 on certificates of origin and applications for such certificates,

'1. Certificates of origin relating to goods originating in the Community or in one of the Member States and intended for export from the Community, and the applications for such certificates, must ... be made out on forms conforming to the specimens annexed to this Regulation .....

2. The competent national authorities shall determine what additional particulars, if any, are to be given in the application. Such additional particulars must be kept to a strict minimum.'

(4) Simplification of customs procedures and legislation

12. An interim report by the Committee on Economic and Monetary Affairs (Doc. 376/77) emphasizes the need to expedite the work of harmonizing and simplifying the customs legislation proposed by the Commission and approved by the Council, in particular with a view to reducing the cost of products. In the motion for a resolution (Doc. 356/76) on the simplification of customs procedures, customs legislation and institutional methods for dealing with customs matters, Parliament pointed out that '..... contrary to the objectives of the EEC Treaty, outdated customs regulations place an increased cost burden on the economy and dislocate transport and economic activity'. This situation is 'a luxury which the Community can ill afford at a time of growing economic difficulties for its Member States, having regard to the need to maintain the competitive position of its industries .....'.

(5) Conditions for the post clearance collection of export duties which have been underpaid on goods entered for a customs procedure involving the obligation to pay such duties

13. On 22 November 1977 the Committee on External Economic Relations unanimously approved a proposal from the Commission to the Council (OJ No. C 138 of 11 June 1977, p. 13) on this matter. The committee's report (Doc. 418/77) is very explicit: 'In the interests of legal certainty, the time limit for post clearance collection will be fixed at a period of three years following that in which liability was incurred. There are again two exceptions to this:

- the stipulated time limit shall not apply when it is shown that inability to determine the exact amount of duty payable was the result of fraudulent action (Article 3);

- there can be no post clearance collection in the case of mistakes made by the authorities themselves when the declarant acted in good faith (Article 5).....

This regulation eliminates inequalities as between the respective procedures of the Member States and allows better control of the Community's own resources.'

(6) Possible effects of Article 8(3) of the proposal under consideration

14. 'Transport of the goods to the places where they are to be examined, and their unpacking, repacking and all other operations required for examination shall be undertaken by the declarant or on his authority. He shall bear all costs incurred.'

The desirability of having such a clause is perhaps open to question since it is conceivable that some declarants would run the risk of being systematically subjected to these formalities, and, therefore, of being treated unfairly. The clause is taken from a directive of July this year concerning the formalities applicable to imports of products in free circulation.

The Member States unanimously agreed on this part of the procedure on the grounds that Community practice had, after long experience, shown such a risk to be negligible.

15. The proposal under consideration cannot, then, be considered as an isolated text, detached from the rest of Community law. On the contrary, it belongs to a broad range of measures aimed at the harmonization of customs legislation. Its provisions have been drawn up with a view to striking a delicate balance, with equal importance being attached to the requirements of the Community, the operating procedures of the customs institutions of the Member States and the need to ensure the smooth functioning of international trade, and more especially to promote exports of agricultural products. The proposal seeks to establish greater consistency in the procedures followed within the framework of the customs union. It should not be forgotten that the establishment of this customs union is mainly governed by the provisions of Title I, Chapter I of Part Two of the Treaty and that this Chapter contains a body of precise rules for the abolition of duties between the Member States, the introduction and progressive consolidation of the Common Customs Tariff and the autonomous alteration or suspension of duties in that Tariff.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman : Mr NYBORG

On 12 October 1979 the Committee on Economic and Monetary Affairs appointed Mr NYBORG draftsman.

It considered the Commission's proposal at its meeting of 21 November and unanimously adopted the opinion.

Present: Mr Delors, chairman and deputy draftsman; Mr Deleau, vice-chairman; Mr Beazley, Mr Beumer, Mr von Bismarck, Mr Bonaccini, Mr Collomb, Mr Damseaux, Miss Forster, Mr Hopper, Mr Moreau, Sir Brandon Rhys Williams, Mr Wagner, Mr von Wogau and Mr Vondeling.

1. Council Regulation (EEC) No. 2102/77 of 20.9.1977 introduced a Community export declaration form[1]. The purpose of the present proposal is to go a stage further and introduce common customs procedures for exportation, since existing national provisions differ, not only in the number of formalities required, but also in the substance of the legal commitments incurred. This gives rise to disparities in export levies and in the application of other Community provisions, which can lead to deflections of trade and frauds involving fictitious consignments.

The Commission's proposal therefore accords fully with the wish frequently expressed by the Committee on Economic and Monetary Affairs for the introduction of uniform provisions for the administration of the customs union.

2. It must be pointed out that the proposal is for a directive and not for a regulation; national authorities are therefore free to decide how the aims set out in the directive are to be achieved.

3. As a result of the opportunities for obtaining refunds on agricultural exports disparities in the export procedures applicable in that sector assume particular economic importance. The committee agrees with the Commission, however, that Community rules on procedures for the exportation of goods are also necessary for reasons unconnected with the implementation of the common agricultural policy. Disparities in procedures giving rise to deflections of trade and fictitious consignments are economically unacceptable and conflict with the spirit of the treaties.

4. However, the Committee on Economic and Monetary Affairs also has to consider whether the introduction of common provisions might generally impede the export of Community goods to third countries. Here it would point out that the proposed directive, in addition to laying down a common and general export procedure, allows the Member States in certain circumstances to use simplified procedures; thus Articles 14 - 20 allow:

A. Exemption from written declaration;

B. Preparation of general, periodic or recapitulative declarations;

C. Replacement by codified data of all or part of the information contained in the declaration;

D. Granting of authorization for exportation before presentation of the declaration.

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[1] OJ No. L 246 of 27.9.1977, p. 1

For this purpose, account is to be taken of the nature of the goods to be exported, the frequency and the financial implications of exportation, the commercial organization of the exporting firm, the administrative means which might be used to keep a check on its activities, and advances in customs procedures, in particular data processing techniques.

Against this background, the Committee on Economic and Monetary Affairs agrees with the Commission that a proper balance has been struck between, on the one hand, the avoidance of excessively strict procedures which might impede exports and, on the other, the prevention of fraudulent practices harmful to the Community budget.

5. No comments concerning this proposal for a directive have reached the draftsman from other sources.

Conclusion

The Committee on Economic and Monetary Affairs endorses the aims of the Commission's proposal for a directive; during its deliberations no amendments were tabled to the text of the proposed directive.